

1                                   BEFORE THE DEPARTMENT OF CORPORATIONS  
2                                   OF THE STATE OF CALIFORNIA

3  
4  
5 In the Matter of the Accusation of THE  
6 COMMISSIONER OF CORPORATIONS OF  
7 THE STATE OF CALIFORNIA,

OAH File No. L-2001030493

Agency Case No. 988-0493

8                                   Complainant,

9                                   vs.

10                                  FIRST FINANCIAL FUNDING GROUP,

11                                  Respondent.

12  
13   DECISION  
14   (AFTER REJECTION)

15           This matter came on for hearing before Roy W. Hewitt, Administrative Law Judge  
16 of the Office of Administrative Hearings, Los Angeles, California on May 29, 2001.

17           Corporations Counsel, Gabriel Eckstein, represented complainant. Respondent,  
18 First Financial Funding Group, was represented by the corporate president, Mr. James  
19 Guest.

20           Oral and documentary evidence was received and the matter was submitted.

21           On June 28, 2001, the Administrative Law Judge submitted a Proposed Decision,  
22 which was not adopted as the Decision in this matter. Pursuant to Section 11517(c) of  
23 the Government Code, Respondent was served with notice of the determination not to  
24 adopt the proposed Decision of the Administrative Law Judge along with a copy of said  
25 Proposed Decision. Respondent was notified that the case would be decided by the  
26 California Corporations Commissioner upon the record including the transcript of  
27 proceedings held on May 29, 2001, and upon any written argument offered by the  
28 parties.

1 On October 26, 2001, Respondent submitted argument in support of the  
2 Administrative Law Judge's Proposed Decision.

3 The record in this case, including the transcript of proceedings of May 29, 2001  
4 and Respondent's arguments, have been given careful consideration.

5 The following shall constitute the Decision of the California Corporations  
6 Commissioner in the above-entitled matter.

### 7 FACTUAL FINDINGS

8 1. The First Amended Accusation was filed by Demetrios A. Boutris, in his  
9 official capacity as California Corporations Commissioner ("Commissioner"),  
10 Department of Corporations, State of California ("the Department").

11 2. At all times mentioned herein Respondent, First Financial Funding Group,  
12 was a finance lender licensed by the Commissioner pursuant to the California Finance  
13 Lenders Law (California Financial Code section 22000, et seq.). Mr. James Guest, Sr.,  
14 is Respondent's principal, and president.

15 Respondent has offices in Mission Viejo, Sacramento, Riverside, and  
16 Rancho Cucamonga. The Commissioner issued Respondent four separate finance  
17 lender licenses; one for each of its four office locations.

18 3. On November 8, 2000, as part of a routine regulatory examination of  
19 Respondent's offices, a Department examiner requested access to Respondent's latest  
20 financial statements, general ledger(s), and bank reconciliation statements pursuant to  
21 California Financial Code ("CFC") section 22701. CFC section 22156 requires  
22 Respondent to keep and maintain the requested records. CFC section 22701 requires  
23 Respondent to provide the examiner free access to the offices, books and records of  
24 the corporation. In the present instance, however, the examiner was not provided the  
25 requested records, or with any records whatsoever, even though Mr. Guest testified that  
26 he had some books and records on the computer located on the premises.  
27 Furthermore, the examiner was not given free access to the corporate offices. As a  
28 result, the Commissioner was not able to determine if Respondent met the \$25,000.00

1 minimum net worth, as required by CFC section 22104, nor could the Commissioner  
2 determine whether Respondent was in compliance with other applicable provisions of  
3 the CFC.

4 4. On December 27, 2000, an examiner again tried to conduct an on-site  
5 examination of Respondent's offices, books, and records. The main objective of this  
6 visit was to gather necessary information regarding the affairs of Respondent as well as  
7 the current condition of its books and records. Again, Respondent failed to provide the  
8 examiner with its books and records and with free access to the offices even though the  
9 examiner mentioned to Mr. Guest the consequences of failing to provide direct access  
10 to the books and records. Instead, Respondent, through its corporate president, Mr.  
11 Guest, merely informed the examiner that the corporate books and records were  
12 inaccurate and unreliable. Assuming that Mr. Guest's statement was true, then the  
13 books and records were obviously not maintained in accordance with generally  
14 accepted accounting principles.

15 5. On February 20, 2001, the Department received notice from State Farm  
16 Insurance Companies that on March 20, 2001, it was terminating Respondent's surety  
17 bond, which was maintained at the Department. The surety bond was cancelled at the  
18 request of Respondent. To date, the Department has not received a replacement bond.

19 6. As of May 3, 2001, Respondent did not file an annual report with the  
20 Department. Pursuant to CFC section 22159, the annual report was due before March  
21 15, 2001.

22 7. Mr. Guest testified that the reason he did not supply the Department's  
23 examiners with the books and records was because the books and records were  
24 inaccurate and unreliable due to a "fraud" perpetrated on Respondent by the  
25 Respondent's independent CPA and because he felt that he would be in bigger trouble  
26 if he provided financial statements that he knew were not accurate. After discovering  
27 the fraud, Mr. Guest immediately hired an attorney to assess what action should be  
28 taken against Respondent's previous CPA. Mr. Guest claims that it was on the advice

1 of this attorney that Mr. Guest gave the above reasons for not producing the books and  
2 records and not allowing free access to the Department. Through another accounting  
3 firm hired by Mr. Guest it was discovered that the fraud amounted to \$7 million.  
4 However, no evidence was presented to substantiate or corroborate the claim of the  
5 "fraud" nor was there any other explanation of the "fraud". Furthermore, although Mr.  
6 Guest testified that he now knows the true financial condition of Respondent, Mr. Guest  
7 testified that nothing had been submitted to the Department.

8 8. After discovering the fraud, Mr. Guest closed his business. Currently, Mr.  
9 Guest is in the process of formally dissolving Respondent corporation.

10 9. When the instant action was instituted by the Department against  
11 Respondent, the Department received a letter from Respondent requesting that it be  
12 allowed to surrender its licenses. The Department did not accept the surrender of  
13 Respondent's licenses because the Department had received numerous complaints  
14 against Respondent from either contractors or borrowers of Respondent regarding their  
15 loans, such as checks not being honored, and because of the manner Respondent was  
16 conducting its operations and not complying with the law. CFC section 22700 provides,  
17 in pertinent part, that surrender of a license becomes effective 30 days after receipt of  
18 an application to surrender the license unless a revocation proceeding is pending when  
19 the application is filed or a proceeding to revoke is instituted within 30 days after the  
20 application is filed, and, if a proceeding is pending or instituted, surrender of a license  
21 becomes effective at the time and upon the conditions that the Commissioner  
22 determines.

### 23 LEGAL CONCLUSIONS

24 1. Cause exists to revoke Respondent's licenses pursuant to CFC sections  
25 22714 and 22109, because, as set forth in Factual Findings 3, 4, 5, and 6: Respondent  
26 failed to respond to the Commissioner's demands to produce records and to allow free  
27 access to its offices and books and records in violation of CFC section 22701;  
28 Respondent failed to maintain a surety bond in violation of CFC section 22112;

1 Respondent failed to file its annual report for year 2000 in violation of CFC section  
2 22159; and if Respondent had performed these actions before issuance of a license,  
3 the Commissioner would have been warranted in refusing to issue the license originally.

4         2.       The Department's examiners were entitled by law, pursuant to CFC  
5 section 22701, to examine any and all records of Respondent. Mr. Guest, on behalf of  
6 Respondent, on two separate occasions, not only failed to provide the requested  
7 records but also failed to provide free access to the corporate office to the Department's  
8 examiners although Mr. Guest was aware of the consequences of failing to do so. Mr.  
9 Guest's excuses for not providing the requested records and access, as set forth in  
10 Factual Findings 7, is inadequate and not justifiable. It was improper for Respondent  
11 and Mr. Guest to not provide the requested records and not to allow free access to the  
12 offices of Respondent to the regulatory agency that is responsible for the issuance and  
13 regulation of finance lender licenses in order to ensure compliance with the California  
14 Finance Lenders Law and to ensure consumer protection. It is of utmost importance  
15 that the regulatory agency examine and review, and be allowed to examine and review,  
16 the books and records of a licensee anytime the licensee has suffered a financial  
17 impropriety or loss, whether large or small, and regardless of the cause, in order to  
18 determine the financial status of the licensee and to start determining what appropriate  
19 action, if any, should be done by either the licensee or the regulatory agency, or both, to  
20 ensure the licensee's clients and the public are protected. Furthermore, the record  
21 lacks any evidence that Mr. Guest and/or Respondent's attorney ever contacted the  
22 Department to work out or otherwise address any of the concerns of the Department,  
23 including the inability of the Department to review any books and records and to  
24 ascertain the financial condition of Respondent. This shows an indifference and  
25 disregard for the California Finance Lenders Law and its purposes, and frustrates and  
26 impedes the ability of the regulatory agency to conduct its statutory duties under the  
27 law.

28         3.       The record shows that the surety bond was canceled at the request of

1 Respondent. Respondent's action in causing the termination or cancellation of the  
2 surety bond was totally inappropriate since this was done at a time when Respondent  
3 was still licensed and the Department did not know the financial status and situation of  
4 Respondent and the status of Respondent's client/borrowers, such as whether any  
5 client/borrower has suffered or would suffer loss or damage as a result of Respondent's  
6 problems. It was important for Respondent to maintain its surety bond because, as  
7 stated in CFC section 22112, one of the purposes for having and maintaining a surety  
8 bond is so it could be used "for losses or damages incurred by borrowers or consumers  
9 as the result of a licensee's noncompliance with the requirements of this division."

10 4. Respondent was required by law, pursuant to CFC section 22159, to  
11 submit its annual report for year 2000 to the Department by March 15, 2001. Mr. Guest  
12 testified that he knew as early as November 3, 2000, that Respondent's financial  
13 statements were not correct. The record lacks any evidence that from November 2000  
14 Mr. Guest corrected the financial statements and submitted them to the Department or  
15 otherwise attempted to make any other arrangements with the Department. No annual  
16 report was ever submitted to the Department.

17 5. For all the above reasons, the following Order is appropriate.

18 ORDER

19 All licenses and licensing rights of Respondent, First Financial Funding Group,  
20 under the California Finance Lenders Law are revoked.

21 This Decision shall become effective on NOV. 30, , 2001.

22 IT IS SO ORDERED.

23 Dated 11/30/01

24

25

26

DEMETRIOS A. BOUTRIS  
California Corporations Commissioner

27

28