

1 WAYNE STRUMPFER  
Acting California Corporations Commissioner  
2 ALAN S. WEINGER (CA BAR NO. 86717)  
Acting Deputy Commissioner  
3 JUDY L. HARTLEY (CA BAR NO. 110628)  
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4 Department of Corporations  
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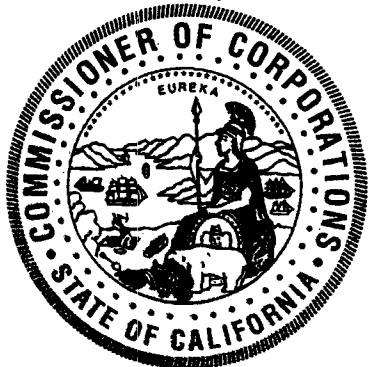
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8 BEFORE THE DEPARTMENT OF CORPORATIONS  
9 OF THE STATE OF CALIFORNIA

10  
11 In the Matter of the Accusation of THE ) File No.: 603-8785  
CALIFORNIA CORPORATIONS )  
12 COMMISSIONER, ) ORDER REVOKING FINANCE LENDERS  
13 ) LICENSE  
Complainant, )  
14 )  
15 vs. )  
16 KOBAY FINANCIAL CORP. )  
17 Respondent. )

18  
19 Pursuant to the August 2, 2005 Proposed Decision of Administrative Law David B.  
20 Rosenman adopted by the California Corporations Commissioner on November 4, 2005, attached  
21 and incorporated herein as Exhibit A, it is hereby ordered that the finance lenders license issued by  
22 the Commissioner to Kobay Financial Corp. is hereby revoked. This order is effective as of  
23 November 4, 2005.

24 Dated: November 15, 2005

WAYNE STRUMPFER  
Acting California Corporations Commissioner



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26  
27 By \_\_\_\_\_  
Patricia R. Speight  
28 Special Administrator  
California Finance Lenders Law

BEFORE THE  
DEPARTMENT OF CORPORATIONS  
STATE OF CALIFORNIA

In the Matter of the Accusation of THE  
CALIFORNIA CORPORATIONS  
COMMISSIONER,

Complainant,

vs.

KOBAY FINANCIAL CORP.,

Respondent.

Department File No.: 603-8785

OAH No. L2005040040

DECISION

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on 11/4/05.

IT IS SO ORDERED this 4 day of NOVEMBER, 2005.

CALIFORNIA CORPORATIONS COMMISSIONER

WAYNE STRUMPFER  
Acting California Corporations Commissioner

EXHIBIT A

BEFORE THE DEPARTMENT OF CORPORATIONS  
STATE OF CALIFORNIA

In the Matter of the Accusation of THE  
CALIFORNIA CORPORATIONS  
COMMISSIONER,

Complainant,

vs.

KOBAY FINANCIAL CORP.,

Respondent.

Department File No.: 603-8785

OAH No. L2005040040

PROPOSED DECISION

This matter came on regularly for hearing before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, on July 12, 2005, at Los Angeles, California. Complainant William P. Wood, California Corporations Commissioner, was represented by Judy L. Hartley, Senior Corporations Counsel. Respondent Kobay Financial Corp. did not appear for the hearing and was not represented.

Complainant's motion to amend the Accusation was granted, as follows: on page 3, at line 20, the amount \$7,475.00 was deleted, and the amount \$2,875.00 was inserted in its place. Evidence was received, the record was closed, and the matter was submitted.

FACTUAL FINDINGS

The Administrative Law Judge makes the following factual findings:

1. William P. Wood filed the Accusation in his official capacity as Corporations Commissioner of the State of California.

2. After service of the Accusation on Respondent, a Notice of Defense was filed, signed by Vlad Baydovskiy, who is the Chief Executive Officer of Respondent. The Notice of Hearing was mailed to Mr. Baydovskiy at the address indicated in the Notice of Defense, which is also the address for Respondent in the Department of Corporations' records of Respondent. Despite having been served with notice of the hearing, neither Respondent nor Mr. Baydovskiy appeared for the hearing.

3. Respondent Kobay Financial Corp. (Kobay) is a broker licensed by the California Corporations Commissioner (Commissioner) pursuant to the California Finance Lenders Law (Financial Code section 22000 et seq.) (CFL). Kobay has its principal place of business located at 21650 Oxnard Street, Ste. 530, Woodland Hills, California 91367.

4. On June 21, 2004, the Commissioner, through his examination staff, commenced a regulatory examination of the books and records of Kobay under the CFL (regulatory examination). The regulatory examination disclosed that Kobay (a) provided a false license to Accubanc Mortgage, a division of National City Mortgage Co. (Accubanc) in violation of Financial Code section 22161, (b) regularly brokered loans to non-CFL lenders in violation of Financial Code section 22059, (c) regularly failed to fully disclose broker fees in violation of Financial Code section 22338, (d) prepared false Borrower-Broker Agreements and Good Faith Estimates in anticipation of the Commissioner's examiner returning to make copies of loan files in violation of Financial Code section 22156, (e) regularly failed to disclose its CFL license number in violation of Financial Code section 22338, (f) regularly failed to include the information about the Department of Corporations as required by California Code of Regulations, title 10, section 1454, subdivision (a)(5), and (g) paid commission fees to non-exempt persons in violation of California Code of Regulations, title 10, section 1451, subdivision (c), as described below.

#### False License

5. On April 26, 2004, Kobay provided a false license to Accubanc. Accubanc is not licensed under the CFL, and therefore, pursuant to Financial Code section 22059, CFL broker licensees such as Kobay are unable to broker loans to Accubanc under their CFL license. The false license purported to grant regulatory approval to Kobay to engage in the business of "banker" under the California Real Estate Law. The license was purportedly issued on April 26, 2004 by the Department of Corporations under the Mortgage Banker Real Estate Law and was executed by a James Strathen, Special Administrator, California Real Estate Law.

6. There is no Mortgage Banker Real Estate Law in California. There is the California Residential Mortgage Lending Act (Financial Code section 50000 et. seq.), and the California Real Estate Law (Business and Professions Code section 10000 et. seq.). Kobay is not licensed under either of those laws. There does not exist anyone named James Strathen at either the Department of Corporations or the Department of Real Estate.

7. In furtherance of this fraud, Kobay provided Accubanc with the telephone number of "James Strathen, Special Administrator, California Real Estate Law." During a telephone conversation with the alleged James Strathen, Accubanc was assured the license was legitimate. Accubanc allowed Kobay to broker loans under both the CFL and the California Real Estate Law. However, the telephone number provided by Kobay to Accubanc for "James Strathen" is identified on Kobay's website as the mobile number for one of its loan officers of another name.

### Loans Brokered to Non-CFLL Lenders

8. Kobay brokered loans to non-CFLL lenders in seven of the eight loans (87.5%) reviewed regarding this issue. A list of loans brokered by Kobay since January 28, 2003, obtained during the regulatory examination, which included the name of the lender, disclosed that Kobay brokered to non-CFLL lenders in at least 99 of these 231 loans (43%).

### Failure to Fully Disclose Broker Fees

9. Kobay failed to fully disclose broker fees in six of the eight (75%) loans reviewed regarding this issue, as follows:

<u>Loan</u>	<u>Fees Per Final HUD-1</u>	<u>Fees Disclosed</u>
1. Mendoza	\$3,350.00	\$2,300.00
2. Menor	\$8,475.00	\$2,875.00
3. Harding	\$5,119.00	\$4,771.00
4. Denney	\$3,140.00	\$1,040.00
5. Dudek	\$2,225.00	\$ 820.00
6. Connelly	\$5,637.12	\$ 695.00

### Misrepresentations in Loan Records

10. On October 27, 2004, prior to the return of the Commissioner's examiner to make copies of the full loan files previously reviewed and described in Finding 9, items 1-5 above, Kobay fabricated further Borrower-Broker Agreements and Good Faith Estimates to show that the broker fees disclosed matched the broker fees received by Kobay.

### Failure to Provide CFLL License Number

11. Kobay failed to provide borrowers with a statement containing its CFLL license number in all ten (100%) loans reviewed regarding this issue.

### Failure to Provide Department of Corporations Information

12. Kobay failed to include the required information about the Department of Corporations in all ten loans reviewed.

### Commissions to Non-Exempt Person

13. Kobay paid commission fees in each of the ten closed loan files reviewed. None of the persons Kobay paid commissions to in those transactions were (a) employees of Kobay, (b) licensed under the CFLL, (c) licensed real estate brokers, or (d) a financial institution exempt from licensing under the CFLL.

CONCLUSIONS OF LAW

Based on the foregoing factual findings, the Administrative Law Judge makes the following conclusions of law:

1. Cause exists to suspend or revoke Respondent's license pursuant to Financial Code section 22161 for providing a false license, as set forth in Findings 3 through 7.

2. Cause exists to suspend or revoke Respondent's license pursuant to Financial Code section 22059 for brokering loans to non-CFLL lenders, as set forth in Findings 3, 4 and 8.

3. Cause exists to suspend or revoke Respondent's license pursuant to Financial Code section 22338 for failing to fully disclose broker fees, as set forth in Findings 3, 4 and 9.

4. Cause exists to suspend or revoke Respondent's license pursuant to Financial Code section 22156 for preparing false Borrower-Broker Agreements and Good Faith Estimates, as set forth in Findings 3, 4 and 10.

5. Cause exists to suspend or revoke Respondent's license pursuant to Financial Code section 22338 for regularly failing to disclose its CFLL license number, as set forth in Findings 3, 4 and 11.

6. Cause exists to suspend or revoke Respondent's license pursuant to California Code of Regulations, title 10, section 1454, subdivision (a)(5) for failing to include the information about the Department of Corporations, as set forth in Findings 3, 4 and 12.

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7. Cause exists to suspend or revoke Respondent's license pursuant to California Code of Regulations, title 10, section 1451, subdivision (c) for paying commission fees to non-exempt persons, as set forth in Findings 3, 4 and 13.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby issued:

The California Finance Lenders Law license of Respondent Kobay Financial Corp. is revoked.

DATED: August 2, 2005.

DAVID B. ROSENMAN  
Administrative Law Judge  
Office of Administrative Hearings

1 WILLIAM P. WOOD  
California Corporations Commissioner  
2 WAYNE STRUMPFER (CA BAR NO. 160080)  
Acting Deputy Commissioner  
3 ALAN S. WEINGER (CA BAR NO. 86717)  
Supervising Counsel  
4 JUDY L. HARTLEY (CA BAR NO. 110628)  
Senior Corporations Counsel  
5 Department of Corporations  
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7 Attorneys for Complainant  
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9 BEFORE THE DEPARTMENT OF CORPORATIONS  
10 OF THE STATE OF CALIFORNIA  
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12 In the Matter of the Accusation of THE ) File No.: 603-8785  
CALIFORNIA CORPORATIONS )  
13 COMMISSIONER, ) ACCUSATION  
14 )  
Complainant, )  
15 )  
16 vs. )  
17 KOBAY FINANCIAL CORP., )  
18 Respondent. )  
19 \_\_\_\_\_ )

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

22 1. Respondent Kobay Financial Corp. (“Kobay”) is a broker licensed by the California  
23 Corporations Commissioner (“Commissioner”) pursuant to the California Finance Lenders Law of  
24 the State of California (California Financial Code § 22000 et seq.) (“CFLL”). Kobay has its  
25 principal place of business located at 21650 Oxnard Street, Ste. 530, Woodland Hills, California  
26 91367.  
27  
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## II

1  
2 On or about June 21, 2004, the Commissioner, through his examination staff, commenced a  
3 regulatory examination of the books and records of Kobay under the CFLL (“regulatory  
4 examination”). The regulatory examination disclosed that Kobay (i) provided a false license to  
5 Accubanc Mortgage, a division of National City Mortgage Co. (“Accubanc”) in violation of  
6 California Financial Code section 22161, (ii) regularly brokered loans to non-CFLL lenders in  
7 violation of California Financial Code section 22059, (iii) regularly failed to fully disclose broker  
8 fees in violation of California Financial Code section 22338, (iv) prepared false Borrower-Broker  
9 Agreements and Good Faith Estimates in anticipation of the Commissioner’s examiner returning to  
10 make copies of loan files in violation of California Financial Code section 22156, (v) regularly failed  
11 to disclose its CFLL license number in violation of California Financial Code section 22338, (vi)  
12 regularly failed to include the information about the Department of Corporations as required by  
13 California Code of Regulations, title 10, section 1454(a)(5), and (vii) paid commission fees to non-  
14 exempt persons in violation of California Code of Regulations, title 10, section 1451(c), as described  
15 below.

A. False License

16  
17 On or about April 26, 2004, Kobay provided a false license to Accubanc in violation of  
18 California Financial Code section 22161. Accubanc is not licensed under the CFLL, and therefore,  
19 pursuant to California Financial Code section 22059, CFLL broker licensees, such as Kobay, are  
20 unable to broker loans to Accubanc under their CFLL license. The false license purported to grant  
21 regulatory approval to Kobay to “engage in the business of banker”. The license was purportedly  
22 issued on April 26, 2004 by the Department of Corporations under the Mortgage Banker Real Estate  
23 Law and was executed by a James Strathen, Special Administrator, California Real Estate Law.

24 There is no Mortgage Banker Real Estate Law in California. There is the California  
25 Residential Mortgage Lending Act (California Financial Code §§ 50000 et. seq.), and the California  
26 Real Estate Law (California Business and Professions Code §§ 10000 et. seq.). Kobay is not  
27 licensed under either of those laws. Moreover, there does not exist anyone named James Strathen at  
28 either the Department of Corporations or the Department of Real Estate.

1 In furtherance of this fraud, Kobay provided Accubanc with the telephone number of the  
 2 “James Strathen, Special Administrator, California Real Estate Law”. During a telephone  
 3 conversation with the alleged James Strathen, Accubanc was assured the license was legitimate and  
 4 allowed Kobay to broker under both the CFLL and the California Real Estate Law. The telephone  
 5 number provided by Kobay to Accubanc for “James Strathen” was (310) 497-9450. This telephone  
 6 number is identified on Kobay’s website as the mobile number for one of its loan officers.

7 **B. Loans Brokered to Non-CFLL Lenders**

8 The regulatory examination disclosed that Kobay had brokered loans to non-CFLL lenders in  
 9 7 of the 8 loans (87.5%) reviewed regarding this issue in violation of California Financial Code  
 10 section 22059.<sup>1</sup> A list of loans brokered by Kobay since January 28, 2003 obtained during the  
 11 regulatory examination, which included the name of the lender, disclosed that Kobay brokered to  
 12 non-CFLL lenders in violation of California Financial Code section 22059 in at least 99 of these 231  
 13 loans (43%).

14 **C. Failure to Fully Disclose Broker Fees**

15 The regulatory examination further disclosed that Kobay had failed to fully disclose broker  
 16 fees in 6 of 8 (75%) loans reviewed regarding this issue in violation of California Financial Code  
 17 section 22338 as follows:

<u>Loan</u>	<u>Fees Per Final HUD-1</u>	<u>Fees Disclosed</u>
19 1. Mendoza	\$3,350.00	\$2,300.00
20 2. Menor	\$8,475.00	\$7,475.00
21 3. Harding	\$5,119.00	\$4,771.00
22 4. Denney	\$3,140.00	\$1,040.00
23 5. Dudek	\$2,225.00	\$ 820.00
24 6. Connelly	\$5,637.12	\$ 695.00

25 **D. Misrepresentations in Loan Records**

26 On or about October 27, 2004, in anticipation of the return of the Commissioner’s examiner  
 27  
 28

1 to make copies of the full loan files previously reviewed and described in C., items 1-5 above,  
2 Kobay, in violation of California Financial Code section 22156, fabricated further Borrower-Broker  
3 Agreements and Good Faith Estimates to show that the broker fees disclosed matched the broker  
4 fees received by Kobay.

5 E. Failure to Provide CFLL License Number

6 The regulatory examination also disclosed that Kobay had failed to provide borrowers with a  
7 statement containing its CFLL license number as required by California Financial Code section  
8 22338 in 10 of 10 (100%) loans reviewed regarding this issue.

9 F. Failure to Provide Department of Corporations Information

10 The regulatory examination disclosed that Kobay failed to include the required information  
11 about the Department of Corporations in violation of California Code of Regulations, title 10,  
12 section 1454(a)(5) in 10 of 10 loans reviewed.

13 G. Commissions to Non-Exempt Person

14 California Code of Regulations, title 10, section 1451 (c) prohibits the payment of any  
15 compensation to an unlicensed person or company except employees, a licensed real estate broker or  
16 financial institution exempt from licensing under the CFLL. Kobay paid commission fees in each of  
17 the 10 closed loan files reviewed. None of the persons Kobay paid commissions to in those  
18 transactions were (i) employees of Kobay, (ii) licensed under the CFLL, (iii) licensed real estate  
19 brokers, or (iv) a financial institution exempt from licensing under the CFLL.

20 III

21 California Financial Code section 22714 provides in pertinent part:

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

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

27 (3) A fact or condition exists that, if it had existed at the time of the original

28 <sup>1</sup> There were a total of 13 loan files reviewed. The 13 files consisted of 8 brokered loans and 3 turndowns that were reviewed during the initial field examination in June 2004 and 2 further loan files reviewed at a later date, which were chosen specifically because National City Mortgage Company was the lender.

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application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

California Financial Code section 22109 provides in pertinent part:

(a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for any of the following reasons:

(3) The applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder . . .

IV

Complainant finds that, by reason of the foregoing, Respondent Kobay has violated California Financial Code sections 22059, 22156, 22161 and 22338 and California Code of Regulations, title 10, sections 1451(c) and 1454(a)(5) and based thereon, sufficient grounds exist to revoke the CFLL license of Kobay.

WHEREFORE, IT IS PRAYED that the CFLL license of Respondent Kobay be revoked.

Dated: March 8, 2005  
Los Angeles, CA

WILLIAM P. WOOD  
California Corporations Commissioner

By \_\_\_\_\_  
Judy L. Hartley  
Senior Corporations Counsel