

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of THE CALIFORNIA
CORPORATIONS COMMISSIONER,

OAH No.: L2007090318

Complainant,

v.

MONTEREY BAY SECURITIES, INC.
and KENNETH DOOLITTLE, President,

Respondents.

DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated February 15, 2008, is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter with the following technical and minor changes pursuant to Government Code Section 11517(c)(2)(C).

- 1) In the first line of Legal Conclusions number 6 on page 15 of the Proposed Decision: add ".241" after "section 260".
- 2) In the second line of Legal Conclusions number 21 on page 26 of the Proposed Decision: "252401" should be "25401".

This Decision shall become effective on May 28, 2008.

IT IS SO ORDERED this 27th day of MAY 2008.

CALIFORNIA CORPORATIONS COMMISSIONER

Preston DuFauchard

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PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter in Oakland, California, on September 24 and 25, November 19, 20 and 21, and December 12 and 13, 2007.

Joan E. Kerst, Senior Corporations Counsel, represented Complainant Preston DuFauchard, Commissioner of the California Department of Corporations.

Respondent Kenneth Doolittle, President, represented himself and Respondent Monterey Bay Securities, Inc.

The record was left open until January 17, 2008, to receive written closing argument in accordance with a briefing schedule. Complainant's closing brief was received and marked for identification as Exhibit 32. Respondents' closing brief was due January 10, 2008, however, no brief or other communication from Respondents was received. Accordingly, Complainant did not file a reply brief.

The record closed on January 17, 2008.

FACTUAL FINDINGS

1. Since 1984 Kenneth Doolittle (Respondent) has served as the president and as the financial and operations principal of Respondent Monterey Bay Securities, Inc. (MBS), a California corporation. Respondent is MBS's sole shareholder and he completely controls the company.

The Department of Corporations (Department) regulates broker-dealers and other persons who work in the securities industry in California. On May 13, 1985, the Corporations Commissioner issued a broker-dealer certificate to MBS.

2. Respondent also formed Monterey Bay Investment Corporation (MBIC) and acts as its president. In 1986 the Commissioner issued MBIC an investment advisor certificate. The certificate was revoked in 2000. Respondent did not inform clients or investors that his investment advisor certificate had been revoked.

A Department examiner observed business cards identifying MBIC as an investment advisor in Respondent's office during a regulatory examination on June 11, 2002. By letter dated September 9, 2002, Respondent was directed to provide written assurance that he would no longer use such business cards. Respondent provided this assurance by letter dated May 6, 2003. He explained that the delay was due to a flood in his office.

3. For approximately five years ending in October 2005, Respondent conducted business from an office located at 11 Seascape Village, Aptos. He moved thereafter to Idaho where he now resides, but he still maintains a post office box in Aptos to receive mail concerning his California business interests. In addition, Respondent currently employs a part-time bookkeeper who works at another location in Aptos.

4. Respondent has worked in the securities industry for over 26 years. He was with the Dean Witter firm approximately four years before he left to begin his own firm. Respondent explains that he formed MBS to deal in securities and MBIC to be a holding company and also to conduct other businesses. MBIC was also licensed as an insurance broker in California. In addition, Respondent held a federal firearms dealer license from 1996 until 2005.

5. Respondent has held several California Department of Real Estate licenses. He provided copies of two current licenses. An Officer License in the name of Monterey Bay Securities Inc, Kenneth Mark Doolittle, Officer, was issued March 25, 2005, and carries an expiration date of March 24, 2009. A Broker License in the name of Kenneth Mark Doolittle, fictitious business name Recycled Housing, was issued March 25, 2005, and carries an expiration date of March 24, 2009.

6. On September 14, 2005, Respondent and his wife Marilyn Doolittle filed Bankruptcy Petition Number 05-55696 (Chapter 7) with the United States Bankruptcy Court in the Northern District of California/San Jose.

On December 10, 2007, the Court entered a decision granting the trustee's motion for summary judgment and denying discharge. The basis for the order was Respondent's violation of a previous court order to turn over assets and his failure to provide "an accounting of all residuals and commissions collected by MBIC and sums collected from the mobile home notes."

APPLICATION FOR NEW MOBILE HOME SALES LICENSE

7. In March 2005 Respondent applied to the Department of Housing and Community Development (HCD) for a manufactured home dealer's license. This license is required for the sale of new manufactured homes. (A used home may be sold without such a license.) A temporary permit was issued for 120 days with an expiration date of July 22, 2005. In the intervening period, HCD employee Angela Torrens conducted an investigation. On July 18, 2005, the agency notified Respondent that his application was denied.

There were several reasons for the denial. The application requires disclosure of all judgments entered against the applicant in the previous five years. Respondent denied having any such judgments, however, a search of court records revealed that this was not true. A judgment was entered against Respondent in Santa Clara County in October or November of 2004. And, after Respondent submitted the application, a judgment was issued on May 16, 2005, against Respondent in Santa Cruz County for \$600,000. In addition, Torrens noted that the Department had received numerous complaints concerning Respondent during the time he operated pursuant to the temporary permit.

CURRENT DEPARTMENT ACTION

8. Licensed investment advisers and broker-dealers in California are subject to the provisions of Corporations Code section 25000, et seq. and corresponding regulations.

9. On January 2, 2007, the Commissioner issued a Desist and Refrain Order to Respondents alleging violations of Corporations Code sections 25110, 25230 and 25401.

On April 22, 2007, the Commissioner issued an Accusation seeking to revoke MBS's broker-dealer certificate and bar Respondent from employment, management, or control of any broker-dealer or investment advisor.

On August 9, 2007, the Commissioner issued, pursuant to Corporations Code section 25252, a Statement in Support of an Order Levying Administrative Penalties and Claim for Ancillary Relief against Respondents.

10. In summary, the Commissioner now seeks revocation of MBS's broker-dealer certificate, an order barring Respondent from the securities industry, affirmation of the Commissioner's Desist and Refrain Order, administrative penalties, and ancillary relief, including restitution. MBS and Respondent timely filed notices of defense and requested an administrative hearing concerning the Commissioner's actions. This hearing followed.

NASD VIOLATIONS

11. Corporations Code section 25212 provides that California licensees must conform to laws and regulations promulgated by the National Association of Securities Dealers (NASD). NASD maintains the records of registered representatives and principals in its Central Registration Depository (CRD). Respondent's CRD number is 1017937.

12. On May 6, 1997, NASD filed a complaint against Respondent and MBS for four securities violations. On July 9, 1998, the NASD National Adjudicatory Council issued a final order censuring Respondent and MBS and requiring Respondent to take an examination to re-qualify as a financial and operations principal. The most serious violation concerned net capital requirements. Respondent did not inform any clients or investors of the NASD action.

13. On July 26, 2007, NASD filed a complaint against Respondent and MBS. The Complaint notes that Respondent and MBS withdrew from membership in NASD in September 2005; however, NASD had initiated an investigation in November 2004 and accordingly retained jurisdiction. The Complaint was resolved by settlement on November 4, 2007. The settlement includes a finding that Respondent willfully omitted a material fact on a Form U-4. The material fact was that he was charged with a felony in the San Mateo County Superior Court. As a result, Respondent was required to file an amended Form U-4 that disclosed the pending felony charge and he did not do so.

PREVIOUS DEPARTMENT ACTION

14. On October 17, 2005, the Commissioner served upon MBS and Respondent an Order Imposing Condition on Surrender of Certificate as Broker-Dealer pursuant to Corporations Code section 25242, subdivision (a). The conditions were:

1. MBS shall respond to all letter(s) of inquiry from the Commissioner;
2. MBS shall make available for review, examination, and investigation by the Commissioner all books and records, including, but not limited to, accounts, correspondence, memoranda, papers, books, and all other records required by the California Corporations Code section 25241 and California Code of Regulations, sections 260.241 and 260.241.1;

3. The surrender of the broker-dealer certificate shall not be accepted until the Commissioner has finished its review, examination, and investigation of MBS and until the commissioner makes a determination and/or initiates an action; and

4. MBS provides the Commissioner with the name of a contact person for the firm [and] a phone number and an address where the contact person who will have custody of the firms books and records [is located].

In addition, the Commissioner required Respondent to provide all records of complaints from investors and other persons who have transacted business with MBS and Respondent, a list of contact information for all persons who have transacted business with MBS; bank account statements related to MBS and the names and addresses of all entities affiliated with MBS and Respondent.

15. MBS and Respondent did not comply with the conditions for surrender; accordingly, the broker-dealer certificate remains in effect.

BOOKS AND RECORDS REQUIREMENTS

16. MBS and Respondent failed to provide the requisite books and records in response to the Commissioner's Order of October 17, 2005.

17. Respondent brought some records to the hearing on the last few days. Brian Gazvini, Senior Examiner, Securities Regulation Division, Broker-Dealer Advisor Section, examined the documents. He did not locate the following documents, which are required to be maintained: a complaint file; bank statements for 2001 until October 2003; annual reports for 2005 or 2006; quarterly reports for 2005; new account forms; and updated client information.

In addition, if a broker-dealer is conducting another business, has suffered a civil judgment or has filed for bankruptcy, he or she must inform the Department. Respondent did not inform the Department that he was conducting another business (Findings 18 through 22), suffered a civil judgment (Finding 29), and that he filed for bankruptcy (Finding 6).

RESPONDENT'S BUSINESS CONCERNING MANUFACTURED HOMES

18. In 1997 Respondent started a business involving the purchase, remodeling, and sale of manufactured homes. He conducted this business in association with Larry Kroecker, a general contractor who was experienced in remodeling that type of home. Kroecker, who conducted business as Mobile Repo, Inc., would locate the homes, often through notices of foreclosure. Kroecker hired and paid other contractors and workers to make any needed repairs. There is a lease in the record for an office at 11 Seascapes Village, Aptos, for the

term of May 1, 2004, through April 30, 2007. The tenants are identified as Respondent and Mobile Repo, Inc., and Respondent and Kroeker each signed the lease. They also each employed a bookkeeper.

It appears that Respondent was responsible for certain financial aspects of the business. He supplied most of the funds for the repairs. Whether Respondent and Kroeker had a formal business relationship was not established, but it is clear that there was a relationship of some sort.¹ It is also clear that animosity now exists between the men and that the relationship dissolved.

19. Between 1997 and 2005 Respondent bought and sold more than 500 manufactured homes. Although some were sold outright to buyers, the vast majority were sold with seller-provided financing. Respondent obtained the funds for the financing by soliciting potential investors. Some of the investors were clients of MBS and some were not. Respondent advertised for investors in a local newspaper and on a website he created entitled recycledhousing.com. He called the investment the "Recycled Housing Manufactured Home Promissory Note Program" (RH Note Program). Respondent represented that investors would receive between 11 and 15 percent interest.

One newspaper advertisement cites a 13 percent yield on "Affordable Housing 1st Mortgage Notes" offered by Recycled Housing at the Aptos address. Another advertisement cites an 11 percent yield on a "1st Trust Deed on Local Properties" offered by MBS at the Aptos address. This ad also contains the following statements: "Fully Secured, Various Maturities, Receive Monthly Payments, Low Minimum Investment, Eligible for IRAs & Retirement Plans" and "Get Paid Like the Bank." A Department of Real Estate License is identified at the bottom of each ad. It appears the ads ran on various dates in 2004 and 2005.

20. Respondent published a booklet entitled Recycled Housing Manufactured Home Promissory Note Mortgage Program. The booklet is authored by "Kenneth Doolittle, Chief Financial Officer" and describes the investment program in fairly simple terms. Similar information was also available on the internet at recycledhousing.com as recently as June 23, 2005. The booklet references a second document, the Private Offering Memorandum. In evidence is a version dated June 1, 2003. It is 27 pages long and a 15-page sample Loan Purchase Agreement is attached. The introductory paragraph to the Memorandum states in pertinent part as follows:

Recycled Housing ("RH") is a fictitious business name of Kenneth Doolittle, a licensed California Real Estate Broker and Vice President of Mobile Repo, Inc. ("MRI"), a Nevada corporation licensed as a Mobile Home Dealer and General

¹ Although Kroeker testified at hearing, his entire testimony was stricken from the record following his statements that he had lied while under oath in another proceeding and that there was no reason to believe that he would not lie in this one.

Contractor in California. RH and MRI conduct business operations in the acquisition of mobile and manufactured homes that most often require repair and/or remodeling construction work, performing such work and subsequently reselling the homes accompanied by moderate length permanent mortgage financing contracts (the "Loans") to home buyers (the "Borrowers") for their own personal use. RH and MRI expect to earn a profit from the sale of each home in addition to any interest and fees derived from providing Loans to Borrowers. RH is offering to qualified investors entire notes and fractional interests in Promissory Notes that are secured by a first lien of title, deed of trust, or mortgage (in any case, a "First Lien") encumbering mobile or manufactured homes as personal or real property located within California, Nevada, Utah or Arizona.

21. Respondent deposited investor funds into a bank account that he maintained entitled the Manufactured Homes Trust Account. Respondent was the sole signatory on this account. The funds could be in this account for days up to several months and did not earn interest during that time. Respondent would decide which funds would be assigned to which notes. Sometimes Respondent would assign funds to one note then change them to another one.

Respondent serviced the notes. Buyers would make principal and interest payments to him on behalf of the individual investor. If the buyer failed to make payments, the mobile home might be foreclosed. In that case, Respondent would arrange for all necessary work to be performed to enable the home to be sold to a different buyer. During that time, the investor was not paid.

22. Respondent maintained at the hearing that his RH Note Program was conducted under the fictitious business name of Recycled Housing and in his capacity as a licensed real estate broker and that the notes are not securities. In a letter dated July 20, 2005, however, he wrote to a NASD examiner: "RH acts as an issuer, and offers these notes as privately offered securities without having them go through the books and records of [MBS]. This fact has never been hidden from the NASD and has been this way since RH started in the mobile home business in 1997." Respondent thus admitted that the notes constitute "privately offered securities."

SELECTED INDIVIDUAL INVESTORS IN THE RH NOTE PROGRAM
— ENEDINA NADINE JACOBS

23. Enedina Nadine Jacobs initially met Respondent in 1984 when Respondent worked for Dean Witter. She became his client and established a 403B retirement plan with that firm. In approximately 1987, Respondent contacted her and told her that he was starting his own firm and asked if she would like to invest with him. Respondent invested some of Jacobs's money in an Oppenheimer fund and later sold her an annuity. When the annuity

matured, Jacobs transferred the funds into the 403B account she still maintained at Dean Witter.

24. In 2001 Respondent called and told Jacobs that he wanted to show her a new investment opportunity. On September 21, 2001, Jacobs met with Respondent in his office. He told her about the Recycled Housing Note Program, and recommended that she place all of her 403B funds into the program. Respondent told Jacobs it was like being a lender. He told her that she was not making any money in the money market account, that she could make up to 15 percent on the investment, and that he would handle everything. When Jacobs asked her what could go wrong, Respondent told her "we can repossess it and sell it to someone else" and that "nothing could go wrong." Respondent told her further information would be coming. (This did not occur until 2003, when he gave her written information concerning his Recycled Housing business.)

Jacobs did not understand all of the details of "how it was going to happen." Nonetheless, she turned over \$132,000 to Respondent and signed paperwork that Respondent asked her to sign. Jacobs felt pressured – she "thought it had to be done that day." At the time, Jacobs believed that her money would be placed with a trust company until there was a buyer and that she would be "dealt with personally" and advised as the investment progressed. When a buyer was located, Jacobs would receive a promissory note and regular payments. Respondent would receive one percent interest as his fee and she would earn 15 percent. Instead, "the very next month it was gone." She now understands that she had authorized the immediate transfer of the funds to Respondent. Jacobs trusted Respondent because of his past advice to her and his expertise and experience.

25. During the meeting, Respondent directed Jacobs to sign numerous documents, including one that established a self-directed IRA account with the Trust Company of America (TCA); transfer instructions that authorized the transfer of the 403B funds from Dean Witter to the new account with TCA; and a letter addressed to TCA authorizing the transfer of \$132,000 to Respondent. On October 19, 2001, Respondent transferred \$132,000 from the TCA account to his Mobile Home Trust Account. Jacobs never received any promissory notes.

26. In 2002, Jacobs turned 70 and one-half years old. On December 31, 2002, Respondent delivered a minimum distribution payment of \$5,348 to Jacobs at her home. This followed a telephone call from Jacobs's accountant to Respondent. In 2003 Respondent transferred \$4,843 to Jacobs. No subsequent distributions were made. Other than these payments, Jacobs received no return on her investment and Respondent has not returned the principal.

27. After investing, Jacobs met with Respondent three times in his office in an attempt to discover what had happened to her money. When she went by herself, Respondent talked only about his own financial and legal problems. Jacobs subsequently took her accountant with her and, on another occasion, her daughter and her son. Even with assistance, she was unable to obtain satisfactory answers to her questions.

On July 1, 2005, Respondent provided Jacobs with a letter acknowledging his debt to her and his failure to assign notes to her. He advises that he has spent her money "on expenses related to the homes." Jacobs had no idea that her money could be or would be used in such a fashion. Respondent also wrote: "I give you my solemn word that I will do everything in my power to see you repaid in full."

Jacobs contacted the Department after seeing one of Respondent's advertisements in the local newspaper. She was surprised to see that he was advertising when she had not yet been paid.

The last time Jacobs called Respondent's office, she was told that he lived in Idaho and given the telephone number. Jacobs called and Respondent told her that he was in bankruptcy and that she would have to go to the bankruptcy court for relief.

28. Respondent's testimony regarding the Jacobs investment was confusing and contradictory. He insisted that her funds had been used to purchase homes but could not remember which homes.

— LOWELL E. LEWIS

29. Lowell E. Lewis met Respondent when they became next-door neighbors in 1986. They also went to the same church. When Lewis died in 2002 his daughter Martha Lewis became the trustee of his trust. Martha Lewis discovered two canceled checks in Lewis's files made payable to Respondent's Mobile Home Trust Account: one for \$150,000 (dated August 4, 2000) and one for \$25,000 (dated January 23, 2002). She and her husband contacted Respondent to find out what the checks were for.

Respondent told Martha Lewis and her husband that the checks were for Lewis's investment in his RH Note Program and that payments had stopped due to Respondent's financial difficulties.

Martha Lewis, on behalf of the Lewis Family Trust, sued Respondent and MBS for various causes of action based upon Lewis's investment with Respondent, including elder abuse. On January 6, 2005, the court awarded judgment for approximately \$600,000. The award included a sum designated as punitive damages. Martha Lewis testified that she has received approximately \$43,000. On July 14, 2005, an Acknowledgment of Full Satisfaction of Judgment was filed that states the creditor has accepted payment other than that specified in the judgment in full satisfaction thereof.

— JACQUALYN MONTGOMERY

30. Jacquelyn Montgomery and her father met Respondent in the mid-1990's. Respondent told them that he was a real estate broker and a registered investment advisor. They each invested in a condominium project that Respondent was involved in and were paid

in full on that investment. Subsequently, Respondent told Montgomery and her father that he had mobile homes to sell and that if they invested with him they would earn 15 percent interest. Montgomery and her father chose to participate.

Respondent never provided a prospectus to Montgomery. She did receive promissory notes/security agreements on all but the last of her investments; however, Respondent's name was on title as owner.

31. On February 25, 2002, Respondent invested \$11,326.49 of Montgomery's money in a mobile home purchased by Ramon and Raquel Martinez. On October 29, 2004, Respondent invested \$11,835.13 of Montgomery's money in a mobile home purchased by Gary and Maria Folkerts. The last interest payment Montgomery received on these notes was on May 1, 2006.

After payments stopped Montgomery complained frequently to Respondent. At one point, Respondent told Montgomery that "some woman had sued [him] and that three months of [Montgomery's] payments had come out to pay her." In his testimony, Respondent said that at some point he told Montgomery that the borrowers on her note had made payments since she had last been paid, but that the funds were being used to pay an attorney.

— JOE PERDUE

32. Joe Perdue met Respondent in the late 1990's. Perdue purchased insurance for his mobile home from Respondent. In early 2000 Perdue twice invested \$50,000 with Respondent to be used to fix up and sell mobile homes. According to Perdue's son Keith, this was approximately all of Perdue's savings. Perdue is retired and supports himself with social security income and a small union pension.

Respondent sent letters to Perdue dated February 18 and February 21, 2000, respectively, acknowledging receipt of the monies "to be used for the purchase and sale of mobilehomes." For each of the \$50,000 investments, Respondent stated that he would pay "an interest rate of 15% A.P.R. with monthly payments of interest only." The payment would be \$625 for each loan. The first letter states that "should you decide to withdraw your funds from your loan to us, we will refund to you the full or partial requested amount to you upon no less than sixty days notice." The second letter states that Perdue and Respondent have agreed to a two-year term for the loan and that if Perdue decided not to withdraw his funds at that time, "we can renegotiate the terms for a possible extension."

Perdue received four timely interest payments of 15 percent before the payments stopped. Perdue would call about twice each month and Respondent would offer excuses. Perdue has received no payments since that time and Respondent has not returned the \$100,000.

THE TERRUSA TRANSACTION

33. In February 2005 Respondent advertised a manufactured home for sale in the Summit Mobile Home Park in Canoga Park. A flier that was distributed at the park reads “For Sale Bank Repo” and contains pictures, pricing and other information. The flier directs the reader to recycledhomes.com for more details. Kathleen Terrusa and her husband Mitch were interested in purchasing the home. They contacted Respondent, agreed to purchase the home, and moved in. Terrusa understood, both from Respondent’s representations and information on recycledhousing.com, that a private investor obtained by Respondent would be lending the money to purchase the home. The record is not entirely clear, but it appears that the transaction broke down over the amount of interest that would be charged. The flier references a monthly payment based upon 12 percent, but Terrusa testified that Respondent later demanded 14 percent. In any event, disputes arose and Respondent sued Terrusa in small claims court. He won, she appealed, and he won the appeal. A judgment was entered in favor of Respondent for \$6,443.48 plus \$130 in costs.

34. It is not clear from the Accusation, Complainant’s Closing Brief, or any other pleadings or statements by Complainant what the evidence concerning the Terrusa transaction was offered to prove. Terrusa was not an investor in Respondent’s RH Note Program — she was a buyer of a home. The evidence does not correspond to any of the allegations and no restitution is requested on Terrusa’s behalf.

THE ELSA HARDER MATTER

35. Evidence was received concerning Respondent’s dealings with the Harder family in 2004. Under circumstances not clear in the record, C.R. Harder invested \$80,000 in a manufactured home located in the New England Village mobile home park. The buyers stopped making payments at some point. It appears that someone in the mobile home park referred Harder to Respondent for assistance. Harder entered into an agreement with Respondent that included foreclosure, eviction, removal of the existing home, replacement with a newer home and sale of the newer home. At some point before the matter was resolved, C.R. Harder died and his brother Edward Harder attempted to help C.R. Harder’s widow Elsa Harder deal with the situation.

Both Edward Harder and Kayla M. Grant, attorney for Elsa Harder, testified that Respondent listed the replacement home at too high a price and that it has not sold. Elsa Harder was reported to be out of the country.

Similarly to the Terrusa matter, it was not clear what allegation in the Accusation this evidence was offered to prove. It was also not demonstrated how Respondent’s actions fell within the purview of the Department of Corporations.

RESPONDENT'S POSITION

36. As Respondent failed to submit a closing argument, his position regarding the allegations is drawn solely from his testimony and his examination of the witnesses. Respondent's principal contention is that his RH Note Program is not a security subject to regulation by the Department. According to Respondent, "from 1997 until 2005, our firm bought and sold more than 500 manufactured homes. The vast majority were purchased with the idea of selling them with financing in place; seller-carried financing." Respondent "teamed up" with Larry Kroeker in 1997. Kroeker would locate the homes and Respondent "would use my contacts and expertise to get investors to purchase them." After the purchase "we would become both legal owner and registered owner if we held it long enough, but typically we wouldn't hold it that long, we would sell it to someone who would want to live there and carry the paper." Respondent estimates that he had 40 investors, all of whom he "knew intimately," who invested a total of approximately eight million dollars. Respondent explained that "we took our profit in the form of interest on the notes" and in most cases did not charge a servicing fee. He asserts that the only licensure he needed was as a real estate broker and that he has such licensure.

Respondent appears to claim that all of the investors were fully informed of the risks and benefits of the investment. He also asserts that when investors invested through retirement accounts, custodians or trustees would be used and the rules were followed.

Respondent denies that he created a "mortgage fund." He asserts that "the investors did not invest in my business," rather, all of the client's funds were used to purchase homes. This is clearly not the case. His bank records and other evidence demonstrated that Respondent pooled investor's funds in one bank account and drew from the account various purposes at his sole discretion. In some cases, the money was never assigned to a particular home. Respondent's bookkeeper testified repeatedly that the money raised from the investors paid for operating expenses. And further, payments received on notes were not always forwarded to the investor.

37. Respondent denies that he acted as an investment advisor after his certificate was revoked in 2000. He has not surrendered the original certificate because he has been unable to locate it. He believes he last had an investment advisory client in the mid-1990's. Similarly, Respondent denies that MBS has engaged in activities for which a broker-dealer license is required for many years. Respondent acknowledged having business cards on his desk and using a letterhead "after I should have."

38. It was difficult to discern Respondent's position regarding the remaining allegations. He seemed not to understand the record-keeping requirements and that the Department has the authority to examine his records.

39. In his earlier testimony, Respondent often denied detailed knowledge or the existence of records concerning particular investors and investments. Another answer he gave was that the records were too voluminous, implying that this prevented compliance with

requests to produce. Later in the proceedings, Respondent testified that he employed computer software to keep track of the notes he serviced. This included QuickBooks and Morticare. As referenced above, Respondent finally provided some access to these records to Department examiners during the hearing. These included bank statements, deposit slips, and lists of investors. The accuracy of many of the documents, however, could not be verified.

DISCUSSION

40. Respondent is very experienced in the securities industry and is clearly a very intelligent man. He also has specialized knowledge in related fields, such as insurance and real estate. And yet, Respondent insists that his RH Note Program is not a security. More troubling, however, was his insistence that all of his investors were fully informed, sufficiently sophisticated individuals who assumed the risk of the investments he promoted. This was clearly not the case.

The public interest requires that Respondent's broker-dealer license be revoked; that he be barred from the securities industry; and that he pay restitution to his former clients, administrative penalties, and costs.

41. Counsel for Complainant declares she has spent at least 310.5 hours in preparing for and presenting complainant's case and requests costs be awarded in the amount of \$32,260. It is determined that this amount represents reasonable attorney's fees in this matter.

LEGAL CONCLUSIONS

UNLAWFUL SALE OF SECURITIES

1. It is unlawful in California for any person to offer or sell any security in an issuer transaction unless such sale has been qualified or unless the transaction is exempt. (Corp. Code, § 25110.) Respondent did not attempt to or succeed in qualifying any securities for sale. Respondent contends that the investment scheme he promoted, the RH Note Program, did not encompass the offer or sale of a security.

California defines the term "security" broadly. It means "any note; stock; treasury stock; membership in an incorporated or unincorporated association; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; . . . or, in general, any interest or instrument commonly known as a 'security' . . ." (Corp. Code, § 25019.)

It is therefore clear that the legislature intended notes and investment contracts to be considered securities in California and such designation has been upheld by California courts. (*People v. Leach* (1930) 106 Cal.App.442, 445-450; *People v. Walberg* (1989) 263

Cal.App. 2d 286, 287-295.) Further, it is noted that the purpose of such a broad definition is “to protect the public against spurious schemes, however ingeniously devised, to attract risk capital.” (*Silver Hills Country Club v. Sobieski* (1961) 55 Cal.2d 811, 814.)

Respondent solicited capital that he represented was to be used to purchase notes on behalf of investors. It was a scheme to attract risk capital. Respondent did not qualify the sale and it was not exempt. (Findings 18 through 32 and 36 through 39.) It is therefore concluded that Respondent sold unqualified securities in California in violation of Corporations Code section 25110.

MISREPRESENTATIONS

2. It is unlawful in California to make untrue statements of material facts or to omit material facts when offering to sell or selling a security. (Corp. Code, § 25401.) Information is material if there is a substantial likelihood that a reasonable investor would consider it important in making a decision as to whether or not to invest. (*Insurance Underwriters Clearing House, Inc., v. Natomas Co.* (1986) 184 Cal.App.3d 1520, 1526.)

The evidence demonstrated that Respondent made untrue statements of material fact and/or failed to provide material facts to investors on numerous occasions in connection with the sale of securities to clients. For example, Respondent told certain investors that their money would be assigned to notes when it was not and failed to tell certain investors that their money would be used to refurbish homes to be sold. (Findings 23 through 32.) He therefore violated Corporations Code section 25401.

UNLICENSED ACTIVITY AS INVESTMENT ADVISOR

3. In California, the term “investment advisor” includes persons who, for compensation, engage in the business of advising others regarding the advisability of investing in, purchasing, or selling securities. (Corp. Code, § 25009.) Investment advisors in California are required to be licensed. (Corp. Code, § 25230.)

The evidence demonstrated that Respondent continued to act as an investment advisor after his license was revoked. He solicited investors and, for compensation, advised them to invest in his RH Note program. (Findings 23 through 32.) Respondent therefore violated Corporations Code section 25230.

OTHER VIOLATIONS

–FAILURE TO SURRENDER CERTIFICATE FOLLOWING REVOCATION

4. Corporations Code section 25244 requires the immediate surrender to the Commissioner of an investment advisor certificate that has been suspended or revoked. Respondent did not surrender MBIC’s investment adviser certificate to the Commissioner following the revocation of the certificate in 2000 and thus violated Corporations Code section 25244.

– FAILURE TO MAINTAIN, PRESERVE, AND DISCLOSE BOOKS AND RECORDS

5. Licensed California broker-dealers are subject to examinations of their books and records pursuant to Corporations Code section 25241 and its corresponding regulations. Section 25241 provides in pertinent part:

(a) Every broker-dealer . . . licensed under Section 25230 shall make and keep accounts, correspondence, memorandums, papers, books and other records and shall file financial and other reports as the commissioner by rule requires

(b) All records so required shall be preserved for the time specified in the rule.

(c) All records referred to in this section are subject at any time and from time to time to reasonable periodic, special, or other examinations by the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

6. California Code of Regulations, title 10, section 260 describes in detail the books and records that broker-dealers are required to maintain. It provides:

(a) Every licensed broker-dealer shall make and keep current and accurate the following books and records relating to its business, and provide the Commissioner or his or her designee, complete access and opportunity to make copies of:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) reflecting all asset, liability, income, expense, and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer, and of such

broker-dealer and partners thereof, all purchases, sales, receipts and deliveries of securities for such account and all other debits and credits to such account.

(4) Ledgers (or other records) reflecting the following:

(A) Securities in transfer;

(B) Dividends and interest received;

(C) Securities borrowed and securities loaned;

(D) Monies borrowed and monies loaned (together with a record of the collateral therefore and any substitutions in such collateral);

(E) Securities failed to receive and failed to deliver; and

(vi) All long and all short stock record differences arising from the examination, count, verification and comparison, pursuant to Rule 260.241.2 and Rule 260.241.6 of these rules (by date of examination, count, verification and comparison showing for each security the number of shares long or short count difference).

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for its account or for the account of its customers or partners and showing the location of all securities long and the offsetting positions to all securities short, including long security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(6) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of a discretionary power

by such broker-dealer, or any agent or employee thereof, shall be so designated.

For the purposes of this Clause (6), the following definitions apply:

(i) "Instruction" includes instructions between partners, agents, and employees of a broker-dealer.

(ii) "Time of entry" means the time when such broker-dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

(7) A memorandum of each purchase and sale of securities for the account of such broker-dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker-dealer, a memorandum of each order received showing the time of receipt, the terms and conditions of the order, and the account in which it was entered.

(8) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such broker-dealer.

(9) A record in respect of each cash and margin account with such broker-dealer containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided, however, that in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

(10) A record of all puts, calls, spreads, straddles and other options in which such broker-dealer has any direct or indirect interest or which such broker-dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved.

(11) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital as of the trial balance date pursuant to Rule 15c3-1 under the Securities

Exchange Act of 1934 (17 CFR 240.15c3-1); provided, however, that such computation need not be made by

(A) any broker-dealer unconditionally exempt from Rule 15c3-1 by subparagraph (b)(1) or (b)(3) thereof; and

(B) any member in good standing of a national securities exchange who acts as a floor broker (and whose activities do not require compliance with other provisions of Rule 15c3-1) and who elects to comply with the financial responsibility standards of subparagraph (b)(2) of Rule 15c3-1; and

(C) any broker-dealer electing to operate pursuant to subsection (f) of Rule 15c3-1, who shall make a record of the computations as set forth in said subsection (f). Such trial balances and computations shall be prepared currently at least once a month.

(12) A properly executed Uniform Application for Securities Industry Registration or Transfer Form ("Form U-4") for each agent employed.

If such agent has been registered as a representative of such broker-dealer or such person's employment has been approved by the National Association of Securities Dealers Regulation, Inc., or the New York Stock Exchange, the American Stock Exchange, or the Pacific Exchange, Inc., the retention of a full, correct and complete copy of any and all applications for such registration or approval shall satisfy the requirements of this Clause (12).

(13) A properly executed Uniform Termination Notice for Securities Industry Registration ("Form U-5") for each agent terminated.

(14) A current copy of Form U-4 and (when applicable) Form U-5 shall be maintained in this state at the location listed on Form U-4 as the Office of Employment.

(b)(1) This section does not require a member of the New York Stock Exchange, the American Stock Exchange, or the Pacific Exchange, Inc. or a licensed broker-dealer who transacts a business in securities through the medium of any such member to make or keep such records of transactions cleared for such member or broker-dealer as are customarily made and kept by a clearing broker-dealer pursuant to the requirements of paragraph

(a) of this section and of Section 260.241.1 of these rules; provided that the clearing broker-dealer has and maintains net capital of not less than \$25,000 and is otherwise in compliance with Rule 15c3-1 (17 CFR 240.15c3-1).

(2) This section shall not be deemed to require a member of the New York Stock Exchange, the American Stock Exchange, or the Pacific Exchange, Inc., or a licensed broker-dealer who transacts a business in securities through the medium of any such member, to make or keep such records of transactions cleared for such member or broker-dealer by a bank as are customarily made and kept by a clearing broker-dealer pursuant to the requirements of Sections 260.241 and 260.241.1 of these rules, provided that such member or broker-dealer obtains from such bank an agreement, in writing, to the effect that the records made and kept by such bank are the property of the member or broker-dealer, and that such books and records are available for examination by representatives of the Commissioner as specified in Section 25241 of the Code, and that it will furnish to the Commissioner, upon demand, at such place designated in such demand, true, correct, complete and current copies of any or all of such records.

Nothing herein contained shall be deemed to relieve such member or broker-dealer from the responsibility that such books and records be accurate and maintained and preserved as specified in Sections 260.241 and 260.241.1 of these rules.

(c) This section does not require a broker-dealer to make or keep such records as are required by subsection (a) of this section reflecting the sale of United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F and G.

(d) The records specified in subsection (a) of this section shall not be required with respect to any cash transaction of \$100.00 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

7. California Code of Regulations, title 10, section 260.241.1 describes in detail the preservation requirements for the books and records that broker-dealers are required to maintain under section 260.241. It provides:

(a) Every broker-dealer shall preserve for a period of not less than six years, the first two years of which shall be in an easily

accessible place, all records required to be made pursuant to subsections (a)(1), (2), (3) and (5) of Section 260.241 of; these rules.

(b) Every broker-dealer shall preserve for a period of not less than three years, the first two years of which shall be in an easily accessible place:

(1) All records required to be made pursuant to subsections (a)(4), (6), (7), (8), (9) and (10) of Section 260.241 of these rules.

(2) All check books, bank statements, cancelled checks and cash reconciliations.

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the broker-dealer, as such.

(4) Originals of all communications received and copies of all communications sent by the broker-dealer (including inter-office memoranda and communications) relating to its business, as such.

(5) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers, relating to the business of the broker-dealer, as such.

(6) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(7) All written agreements (or copies thereof) entered into by the broker-dealer relating to its business as such, including agreements with respect to any account.

(8) Records which contain the following information in support of amounts included in the Annual Report required by Section 260.241.2(a) of these rules, or Rule 17a-5(d) under the Securities Exchange Act of 1934 (17 CFR 240.17a-5(d)), if the broker-dealer is exempt from the requirements of subsection (a) of Section 260.241.2 by virtue of subsection (c) of that section:

(A) Money balance position, long or short including description, quantity, price and valuation of each security including contractual commitments in customers' accounts, in cash and fully secured accounts, partly secured accounts, unsecured accounts and in securities accounts payable to customers;

(B) Money balance and position, long or short, including description, quantity, price and valuation of each security including contractual commitments in noncustomers' accounts, in cash and fully secured accounts, partly secured and unsecured accounts and in securities accounts payable to noncustomers;

(C) Position, long or short, including description, quantity, price and valuation of each security including contractual commitments included in the Computation of Net Capital as commitments, securities owned, securities owned not readily marketable, and other investments owned not readily marketable;

(D) Amount of secured demand note, description of collateral securing such secured demand note including quantity, price and valuation of each security and cash balance securing such secured demand note;

(E) Description of futures commodity contracts, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and noncustomers' accounts;

(F) Description of futures commodity contracts, contract value on trade date, market value, gain or loss and liquidating equity or deficit in trading and investment accounts;

(G) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in customers' and noncustomers' accounts;

(H) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in trading and investment accounts;

(I) Number of shares, description of security, exercise price, cost and market value of put and call options including short out of the money options having no market or exercise value, showing listed and unlisted put and call options separately;

(J) Quantity, price, and valuation of each security underlying the haircut for undue concentration made in the Computation for Net Capital;

(K) Description, quantity, price and valuation of each security and commodity position or contractual commitment, long or short, in each joint account in which the broker-dealer has an interest, including each participant's interest and margin deposit;

(L) Description, settlement date, contract amount, quantity, market price, and valuation for each aged failed to deliver requiring a charge in the Computation of Net Capital pursuant to Rule 15c3-1 (17 CFR 240.15c3-1));

(M) Detail relating to information for possession or control requirements under Rule 15c3-3 (17 CFR 240.15c3-3) and reported on the schedule required by Section 260.241.2(a)(1) of these rules;

(N) Detail of all items, not otherwise substantiated which are charged or credited in the Computation of Net Capital pursuant to Rule 15c3-1, such as cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences and insurance claims receivable; and,

(O) Other schedules which are specifically prescribed by the Commissioner as necessary to support information reported as required by Section 260.241.2(a) of these rules.

(9) The records required to be made pursuant to Rule 15c3-3(d)(4) under the Securities Exchange Act of 1934 (17 CFR 240.15c3-3(d)(4)).

(c) Every broker-dealer shall preserve for a period of not less than six years after the closing of any customer's account, any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.

(d) Every broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all charter documents, minute books and stock certificate books.

(e) Every broker-dealer shall maintain and preserve in an easily accessible place all records required under subsection (a)(12) of section 260.241 of these rules until at least three years after the agent has terminated such person's employment and any other connection with the broker-dealer.

(f) The records required to be maintained and preserved pursuant to Sections 260.241 and 260.241.1 of these rules may be produced or reproduced on microfilm and be maintained and preserved for the required time in that form. If such microfilm substitution for hard copy is made by a broker-dealer, such person shall

(1) at all times have available for examination by the Commissioner, the Commissioner's examiners or other representatives of the Commissioner its examination of such person's records, pursuant to Section 25241 of the Code facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements,

(2) arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record,

(3) be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commissioner, the Commissioner's examiner's or other representatives of the Commissioner may request, and

(4) store separately from the original one other copy of the microfilm for the time required.

(g) If a person who has been subject to the requirements of Section 260.241 of these rules ceases to hold a certificate as a broker-dealer, such person shall, for the remainder of the periods of time specified in this Section, continue to preserve the records which he theretofore preserved pursuant to this section.

(h) If the records required to be maintained and preserved pursuant to the provisions of Sections 260.241 and 260.241.1 of these rules are prepared or maintained by an outside service bureau, depository or bank which does not operate pursuant to Section 260.241(b)(2) of these rules, or other record-keeping

service on behalf of the broker-dealer required to maintain and preserve such records, such broker-dealer shall obtain from such outside entity an agreement, in writing, to the effect that such records are the property of the broker-dealer required to maintain and preserve such records and that such books and records are available for examination by representatives of the Commissioner as specified in Section 25241 of the Code and will be surrendered promptly on request by the broker-dealer or the Commissioner.

Agreement with an outside entity shall not relieve such broker-dealer from the responsibility to prepare and maintain records as specified in this section or in Section 260.241 of these rules.

8. The evidence demonstrated that Respondent violated Corporations Code section 25241 and California Code of Regulations, title 10, sections 260.241 and 260.241.1. (Findings 16 and 17.) Respondents failed to comply with the books and records requirements imposed upon broker-dealers.

REQUEST TO REVOKE RESPONDENT'S BROKER-DEALER CERTIFICATE

9. Corporations Code section 25212 authorizes the Commissioner, following the provision of appropriate due process, to revoke the certificate of a broker-dealer if it is established that, among other grounds, the broker-dealer has been held liable in a civil judgment arising out of the sale of a security; has been subject to an NASD order; or has violated any provision of the California Corporations Code and corresponding regulations.

10. The evidence established that Respondent was held liable in a securities-related civil judgment (Finding 29); was subject to an NASD order (Findings 11 through 13); and has violated numerous statutory and regulatory provisions (Findings 16 through 32). Respondent presented little defense to the allegations, save his claim that what he was selling was not a security. Further, numerous persons were harmed by Respondent's actions. Therefore, the public interest requires revocation of Respondent's broker-dealer certificate.

REQUEST TO BAR RESPONDENT FROM THE SECURITIES INDUSTRY

11. Corporations Code section 25213 authorizes the Commissioner, following provision of appropriate due process, to bar a person from employment in the securities industry if the Commissioner finds that such bar is in the public interest and that such person has violated specified provisions of section 25212, including having been held liable in a civil judgment arising out of the sale of a security; or having been subject to an NASD order.

12. The evidence established that Respondent was held liable in a securities-related civil judgment and was subject to an NASD order. Further, Respondent's conduct in connection with the RH Note Program caused significant harm to his clients. Despite his

lengthy experience in the securities and related industries, Respondent chooses to deny that his investment scheme falls within the Commissioner's jurisdiction. He presents a threat to the public interest by employment in the securities industry and cause therefore exists to bar him from such employment.

DESIST AND REFRAIN

13. The evidence established that cause exists to affirm the Commissioner's Desist and Refrain Order issued January 22, 2007.

ADMINISTRATIVE PENALTIES

14. Corporations Code section 25252 authorizes the Commissioner to issue an order levying administrative penalties against a broker-dealer for willful violations of any of the securities laws or regulations. The amounts are as follows: No more than \$5,000 for the first violation; no more than \$10,000 for the second violation; and no more than \$15,000 for each subsequent violation.

Cause exists in this matter to levy administrative penalties. The amounts levied are based upon a consideration of the statutory maximums and all of the facts and circumstances demonstrated by the evidence.

15. Cause exists to levy administrative penalties pursuant to Corporations Code section 25252 as that section interacts with section 25241 (books and records maintenance). An appropriate penalty is \$5,000.

16. Cause exists to levy administrative penalties pursuant to Corporations Code section 25252 as that section interacts with California Code of Regulations, title 10, section 260.241 (make, keep and provide books and records). An appropriate penalty is \$1,000.

17. Cause exists to levy administrative penalties pursuant to Corporations Code section 25252 as that section interacts with California Code of Regulations, title 10, section 260.241.1 (preserve books and records). An appropriate penalty is \$1,000.

18. Cause exists to levy administrative penalties pursuant to Corporations Code section 25252 as that section interacts with section 25110 (unqualified sale of securities). An appropriate penalty is \$5,000.

19. Cause exists to levy administrative penalties pursuant to Corporations Code section 25252 as that section interacts with section 25230 (acting as unlicensed investment advisor). An appropriate penalty is \$5,000.

20. Cause exists to levy administrative penalties pursuant to Corporations Code section 25252 as that section interacts with section 25244 (failure to surrender investment advisor's certificate). An appropriate penalty is \$1,000.

21. Cause exists to levy administrative penalties pursuant to Corporations Code section 25252 as that section interacts with section 252401 (misrepresentations and omissions of material facts). An appropriate penalty is \$5,000.

ANCILLARY RELIEF
– RESTITUTION

22. Corporations Code section 25254, subdivision (a), provides:

If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this part a claim for ancillary relief, including, but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief.

Complainant requests restitution be ordered on behalf of Enedina Nadine Jacobs, Jacquelyn Montgomery, and Joe Perdue. Cause exists for such orders and Respondent shall be ordered to pay restitution based upon the amount currently owed each investor and interest at the legal rate since the date invested.

– COSTS

23. Corporations Code section 25254, subdivision (b), provides:

In an administrative action brought under this part, the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include an amount representing reasonable attorney's fees and investigative expenses for the services rendered

Cause exists to order Respondent to pay costs in the amount of \$32,260.

ORDER

1. The Order to Cease and Desist, signed by the Commissioner of Corporations on January 2, 2007,² is affirmed.

2. The broker-dealer certificate issued on May 13, 1985, to Monterey Bay Securities, Inc., Kenneth Doolittle, President, is revoked.

² The Order is incorporated in full herein by this reference.

3. Kenneth Doolittle is barred from employment in the securities industry in accordance with the provisions of Corporations Code section 25213.

4. Respondent shall pay restitution within 30 days of the effective date of this Decision as follows:

a. Enedina Nadine Jacobs: \$121,809 plus interest at the legal rate commencing September 9, 2001;

b. Jacquelyn Montgomery: \$23,161.62 plus interest at the legal rate commencing May 1, 2006; and

c. Joe Perdue: \$100,000 plus interest at the legal rate since July 1, 2000.

5. Respondent shall pay administrative penalties totaling \$23,000 to the Department of Corporations within 30 days of the effective date of this decision.

6. Respondent shall pay cost recovery in the amount of \$32,260 to the Department of Corporations within 30 days of the effective date of this decision.

DATED: February 15, 2008

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings