

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 DANIEL P. O'DONNELL
Assistant Chief Counsel
4 RYAN CASSIDY (State Bar No. 340274)
Counsel
5
6 Department of Financial Protection and Innovation
2101 Arena Boulevard
7 Sacramento, CA 95834
8 Telephone: (916) 764-8358
9 Fax: (916) 928-7929
Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CFL NO.: 60DBO-117469
13)
14 THE COMMISSIONER OF FINANCIAL) ACCUSATION TO REVOKE FINANCE
PROTECTION AND INNOVATION,) LENDER AND BROKER LICENSE,
15) PURSUANT TO FINANCIAL CODE SECTION
Complainant,) 22714
16 v.)
17)
18 ASSURANCE CAPITAL, INC., DBA TRUST)
CAPITAL USA, also known as)
19 ZIPPFUND.COM,)
20 Respondent.)
21)
22)

23 The Complainant, Commissioner of Financial Protection and Innovation (Commissioner) is
24 informed and believes, and based upon such information and believe, alleges and charges as follows:

25 I.

26 **Introduction and Jurisdiction**

27 1. The Commissioner has jurisdiction over the licensing and regulation of persons and entities
28 engaged in the business of finance lending or brokering under the California Financing Law (CFL)

1 (Cal. Fin. Code § 22000 et seq.)

2 2. At all relevant times, Respondent Assurance Capital, Inc. DBA Trust Capital USA, also
3 known as ZippFund.com (“Assurance Capital”) is and was a California corporation, and, since 2020,
4 a licensed finance lender and broker (CFL License Number 60DBO-117469), located at 4747 Morena
5 Blvd., Suite 375, San Diego, CA, 92109. Assurance Capital publicly states its primary business is
6 making business and equipment loans.

7 3. At all relevant times, Zipp Funding, Inc. (“ZIPP”) is and was, a California Corporation,
8 located at 2036 Hornblend Street, Suite B, San Diego, CA 92109, operating a website
9 www.ZippFund.com, which offered the general public, business loans and lines of credit. ZIPP has
10 never been licensed as a finance lender in California.

11 4. At all relevant times, Paul Kendall (“Kendall”) is and was the sole founder, officer, and
12 control person of Assurance Capital.

13 5. On or around June 22, 2009, Kendall pleaded guilty to a misdemeanor count of filing a false
14 police report of a criminal offense (“2009 guilty plea”).

15 6. In 2018, Kendall applied for a license with the Department of Financial Protection and
16 Innovation (“DFPI”) as a finance lender and broker, under the name Assurance Partners, LLC. The
17 DFPI denied the application on or around October 3, 2018, in part because Kendall failed to disclose
18 the 2009 guilty plea, and in part because the underlying conduct involved filing a false police report
19 (“2018 Order”).

20 7. On or around February 29, 2016, Kendall filed Articles of Incorporation with the California
21 Secretary of State (SOS) for Zipp Funding, Inc. listing himself as Chief Executive Officer, Chief
22 Financial Officer, Secretary, Registered Agent, and an owner of the corporation. ZIPP’s registration
23 as a California corporation was suspended by the SOS on January 30, 2019, and by the California
24 Franchise Tax Board (FTB) on July 1, 2019. To date, the company remains suspended.

25 8. Assurance Capital has never obtained authorization to use the name, ZippFund, or the address
26 2036 Hornblend Street, Suite B, San Diego, CA 92109, to engage in the business of finance lending
27 under the CFL.

28 ///

II.**Violations of the CFL**

1
2
3 9. When Assurance Capital filed its application with the Commissioner for a finance lender and
4 broker license, on or around July 14, 2020, (file number 60DBO-117469), Kendall, as CEO and
5 Director of the applicant, signed the declaration section of the application and also submitted Exhibit
6 C, "Statement of Identity Questionnaire," (SIQ) as required pursuant to California Code of
7 Regulations, title 10, section 1422, declaring under penalty of perjury that the statements made in the
8 application and SIQ were true and correct.

9 10. SIQ question Item #5 asks: "Have you ever been convicted of or pleaded nolo contendere to a
10 misdemeanor or felony?" Kendall answered "no," in spite of the 2009 guilty plea.

11 11. SIQ question #4.b. asks: "Have you ever been refused a license?" Kendall again answered
12 "no," in spite of the 2018 Order, in which the DFPI denied his application for a license.

13 12. In filing the July 14, 2020 application with the Commissioner, Kendall violated Financial
14 Code section 22170(b) which provides: "It is unlawful for any person to knowingly make an untrue
15 statement to the commissioner or the Nationwide Mortgage Licensing System and Registry during
16 the course of licensing, investigation, or examination, with the intent to impede, obstruct, or
17 influence the administration or enforcement of any provision of this division."

18 13. All CFL licensees were required to transition to the Nationwide Multistate Licensing System
19 and Registry (NMLS¹) by December 31, 2021. As a requirement of the transition, Assurance was
20 required to submit multiple forms including, but not limited to a Uniform Mortgage Lender/Broker
21 Application ("Form MU1") and the corresponding Individual Filing ("Form MU2"). On May 26,
22 2022, Kendall filed the Form MU2, as the control person and sole officer of Assurance Capital. In
23 submitting his application, Kendall attested under the penalty of perjury that the answers were true
24 and complete to the best of his knowledge.

25
26
27 ¹ NMLS stands for Nationwide Multistate Licensing System & Registry and is the system of record for non-depository, financial
28 services licensing or registration in participating agencies. including the District of Columbia and U.S. Territories of Puerto Rico, the
U.S. Virgin Islands, and Guam. In these jurisdictions, NMLS is the official system for companies and individuals seeking to apply for,
amend, renew and surrender licenses authorities managed through NMLS

1 14. Form MU2 question (H)(1) asks: “Have you ever been convicted of or pled guilty or nolo
2 contendere in a domestic court, to committing a misdemeanor, involving false statements or
3 omissions?” Kendall again answered “no,” in spite of the 2009 guilty plea.

4 15. Form MU2 question (K)(1) asks: “Has any State regulatory agency ever found you to have
5 made a false statement or omission?” Kendall answered “no” to this question as well, in spite of the
6 2018 Order, denying application for licensure for omitting to disclose his 2009 guilty plea, which in
7 turn, was based on filing a false report with the police.

8 16. Form MU2, question (K) (6) asks: “Has any State regulatory agency ever denied your
9 application for licensure?” Kendall answered “no” in spite of the 2018 Order, denying his license
10 application.

11 17. Form MU2, questions (K)(6) asks: “Has any State regulatory agency ever suspended your
12 registration?” Kendall answered “no” even though the SOS and FTB had both suspended the
13 registration of Kendall’s company, ZIPP, in 2019. Likewise, Kendall answered “no” to question (M)
14 which asks: “Based upon activities that occurred while you exercised control over an organization,
15 has any State ever taken any of the actions listed in (K) through (L) above against any organization?”
16 even though Kendall was in control of ZIPP, at the times of both suspensions.

17 18. By knowingly making untrue statements on NMLS, Assurance Capital and Kendall again
18 violated section 22710(b).

19 19. After obtaining its CFL license, Assurance Capital and Kendall also continued to violate the
20 CFL, mainly in connection with the use of Kendall’s entity, Zipp Funding, Inc., which is not licensed
21 as a CFL broker in California. DFPI’s investigation found that:

22 A. Neither Assurance Capital nor Kendall ever obtained authorization from DFPI to use
23 the name ZippFund or the Hornblend Street address to engage in the business of finance lending or
24 brokering under the CFL. Financial Code section 22155 provides, in relevant part:

25 “Subject to Section 22157.1, a finance lender, broker, mortgage loan originator, or
26 program administrator licensee shall not transact the business licensed or make any
27 loan. . . provided for by this division *under any other name or at any other place of*
28 *business than that named in the license except pursuant to a currently effective*
written order of the commissioner authorizing the other name or other place of
business. . .” (Emphasis added.)

1 Therefore, Assurance and Kendall violated Financial Code section 22155 by transacting business
2 under the name Zipp Fund, which is not named in its license, and at an address which is not named in
3 the license, without receiving authorization to do so.

4 B. When a California resident submitted an application for a loan through the
5 ZippFund.com website, the resident was then contacted by a representative of Assurance Capital
6 about their application. That representative, however, did not disclose that ZIPP was affiliated with
7 Assurance Capital; that Assurance Capital, ZippFund and ZippFunding, Inc. were all owned and
8 operated by Kendall; or that Zipp Funding, Inc. was a suspended entity. Financial Code section
9 22161 provides, in relevant part:

10 (a) A person subject to this division shall not do any of the following:

11 (3) Advertise, print, display, publish, distribute, or broadcast, or cause or permit to
12 be advertised, printed, displayed, published, distributed, or broadcast in any
13 manner, any statement or representation with regard to the business subject to
14 the provisions of this division, including the rates, terms, or conditions for
15 making or negotiating loans, or for making or negotiating assessment contracts,
16 that is *false, misleading, or deceptive, or that omits material information that is
necessary to make the statements not false, misleading, or deceptive*, or in the
case of a licensee, that refers to the supervision of the business by the state or
any department or official of the state... (Emphasis added.)

17 By failing to disclose the material facts above, Assurance and Kendall violated Financial Code
18 section 22161 (a)(3).

19 C. Assurance Capital and Kendall used ZIPP’s website, www.ZippFund.com, to solicit
20 business using a name other than that of the licensee and did not disclose any affiliation with the
21 licensee. Additionally, Assurance Capital solicited business through www.trustcapitalusa.com, by
22 using a name other than the licensee, and did not disclose any affiliation with the licensee. California
23 Code of Regulations, Title 10, section 1557 provides, in relevant part:

24 “A licensee shall not use ‘blind’ advertisements. ‘Blind’ advertising is an
25 advertisement used to solicit business that gives only a telephone number, post office
26 or newspaper box number, or name other than that of the licensee...”

27 By using names other than the name of the licensee on multiple websites, Assurance and Kendall
28 engage in “blind” advertising, thus violating California Code of Regulations, Title 10, section 1557.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

Grounds for Revocation

20. Financial Code section 22714, subdivision (a), provides, in relevant part:

- (a) The commissioner *shall* suspend or *revoke* any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following: . . .
- (2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.
- (3) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally
(Emphasis added.)

21. Because of the violations listed above, the Commissioner finds it has ground to revoke the license of Assurance Capital. Particularly egregious is the fact that Kendall failed to disclose on the 2020 application the same facts that led to his application being denied in 2018, and then failed to disclose the fact that his 2018 application had been denied – not only to the Commissioner, but also on NMLS. These facts which led to the denial of the application in 2018, coupled with the additional disclosure would reasonably have warranted the Commissioner in refusing to issue the 2020 license originally. Also, the way Assurance Capital and Kendall have operated since they obtained a CFL license, including violating numerous CFL sections and regulations in connection with the suspended entity, ZippFunding, Inc. are further independent grounds for revocation.

III.

Penalties Under the CFL

22. Financial Code section 22707.5 states:

- (a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a licensee or other person is violating any provision of this division or any rule or order thereunder, the commissioner or their designee, may issue a citation to the licensee or person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and provide a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars

(\\$2,500) that shall be deposited in the State Corporations Fund. In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors including the gravity of the violation, the good faith of the person or licensees cited, and the history of previous violations. In addition, the commissioner may include a claim for ancillary relief. The ancillary relief may include, but not be limited to, refunds, restitution or disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. A citation issued or a fine assessed pursuant to this section, while constituting punishment for a violation of law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited.

For every violation of the CFL as outlined above, the Commissioner hereby seeks administrative fines according to proof, in an amount of at least \$2,500.00 per violation.

IV.

Conclusion

23. The foregoing findings constitute grounds for the Commissioner to:

- A. Revoke Assurance Capital Inc.’s finance lender and broker license under the CFL;
- B. Levy administrative fines against Assurance Capital, Inc, according to proof.

DATED: November 1, 2022
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

By: _____
RYAN CASSIDY
Counsel
Enforcement Division