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FILED

OCT 19 2011

1 JAMES DEMUS, Counsel (SBN 225005)
2 Department of Real Estate
3 320 West Fourth St., #350
4 Los Angeles, CA 90013

DEPARTMENT OF REAL ESTATE
BY: *James Demus*

4 (213) 576-6982
5 (213) 576-6910 (direct)

9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

No. H-37510 LA

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27)
APEX FINANCIAL & INVESTMENTS INC,
dba Home Assistance & Relief and
FRANCIS Y. CHOE, individually, and
as designated officer of Apex
Financial & Investments Inc,

FIRST AMENDED
ACCUSATION

Respondents.

19 This Accusation amends the Accusation filed on
20 September 8, 2011. The Complainant, Robin Trujillo, a Deputy
21 Real Estate Commissioner of the State of California, for cause
22 of Accusation against APEX FINANCIAL & INVESTMENTS INC, dba
23 Home Assistance & Relief and FRANCIS Y. CHOE, individually, and
24 as designated officer of Apex Financial & Investments Inc, is
25 informed and alleges as follows:

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1 1.

2 The Complainant, Robin Trujillo, a Deputy Real Estate
3 Commissioner of the State of California, makes this Accusation
4 in her official capacity.

5 2.

6 APEX FINANCIAL & INVESTMENTS INC, ("APEX") is
7 presently licensed and/or has license rights under the Real
8 Estate Law (Part 1 of Division 4 of the Business and
9 Professions Code, hereinafter "Code"), as a corporate real
10 estate broker. APEX was initially licensed with the Department
11 of Real Estate for the State of California ("Department") as a
12 corporate real estate broker on March 3, 2003.

13 3.

14 FRANCIS Y. CHOE ("CHOE") is presently licensed and/or
15 has license rights under the Real Estate Law, as a real estate
16 broker. Since March 2, 2003, APEX has been licensed by the
17 Department as a corporate real estate broker by and through
18 CHOE, as the designated officer and broker responsible,
19 pursuant to Code Section 10159.2 for supervising the activities
20 requiring a real estate license conducted on behalf of APEX or
21 by APEX's officers, agents and employees, including CHOE.

22 4.

23 On August 28, 2009, APEX filed Fictitious Business
24 Name Statement with the Los Angeles Registrar-Recorder/
25 County Clerk for "Home Assistance & Relief" ("HAR"). CHOE
26 signed this statement on behalf of APEX.

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1 FIRST CAUSE FOR ACCUSATION

2 (Advance Fee Agreement)

3 5.

4 At all times material herein, Respondents APEX and
5 CHOE were engaged in the business of, acted in the capacity of,
6 advertised or assumed to act as real estate brokers in the
7 State of California, within the meaning of Code Sections
8 10131(d) and 10131.2, including soliciting borrowers,
9 negotiating loans or performing services for borrowers and
10 collecting or contracting for the collection of an advance fee,
11 within the meaning of Code Section 10026.

12 6.

13 On or about September 24, 2008, in response to a
14 television advertisement, Juan Parra and Erika Padilla
15 ("Complainants") entered into an agreement with HAR, in which
16 HAR agreed to negotiate a modification of the loan on
17 Complainants property located at 443 W.93rd Street, Los Angeles,
18 CA, in exchange for the payment of \$2,500 in advance fees.

19 7.

20 The agreement described in Paragraph 6 above,
21 constitutes an advance fee agreement within the meaning of Code
22 Section 10026. APEX and CHOE failed to submit the advance fee
23 agreement described above to the Commissioner ten days before
24 using it, in violation of Code Section 10085 and Section 2970
25 of Title 10, California Code of Regulations ("Regulations").
26 Said conduct, acts and/or omissions of Respondents APEX and
27 CHOE constitutes cause to suspend or revoke the licenses and

1 license rights of APEX and CHOE pursuant to Code Sections
2 10177(d) and/or 10177(g).

3 8.

4 The loan modification agreement described in
5 paragraph 6 above used the fictitious business name of "Home
6 Assistance & Relief" when APEX did have that fictitious
7 business name licensed with the Department, in violation of
8 Code Section 10159.5 and Regulation 2731. This provides cause
9 for the suspension or revocation of the licenses and license
10 rights of APEX and CHOE pursuant to Code Sections 10177(d)
11 and/or 10177(g).

12 SECOND CAUSE FOR ACCUATION

13 (Audit Investigation)

14 9.

15 On September 20, 2011, the Department completed an
16 audit examination of the books and records of APEX pertaining
17 to the activities described in Paragraph 5 which require a real
18 estate license. The audit examination covered a period of time
19 from July 1, 2008 to June 30, 2011. The audit examination
20 revealed violations of the Code and the Regulations as set
21 forth in the following paragraphs, and as more fully discussed
22 in Audit Report LA100186 and the exhibits and workpapers
23 attached to said audit report.

24 TRUST ACCOUNT

25 10.

26 During the audit period APEX did not maintain a trust
27 account.

1 VIOLATIONS OF THE REAL ESTATE LAW

2 11.

3 In the course of activities described in Paragraph 5
4 above and during the examination period described in Paragraph
5 9, Respondents APEX and CHOE acted in violation of the Code and
6 the Regulations in that:

7 (a) APEX did not maintain a columnar record for
8 advance fees collected for loan modification services, which
9 were deposited into APEX's general account, in violation of
10 Code Section 10145 and Regulation 2831.

11 (b) APEX collected advance fees from borrowers and
12 deposited them in a general account, commingling them with
13 APEX's funds, in violation of Code Sections 10145, 10146 and
14 10176(e) and Regulation 2832.

15 (c) A Mortgage Loan Disclosure Statement ("MLDS")
16 was not always contained in loan files provided for the audit,
17 in violation of Code Section 10240 and Regulation 2840.

18 (d) The MLDS in some of the loan files examined did
19 not include APEX's license number and/or the license number of
20 the APEX representative who negotiated the loan, in violation
21 of Code Section 10236.4(b).

22 (e) CHOE did not disclose his real estate license
23 number and his National Mortgage Licensing System number on his
24 business card, in violation of Code Section 10140.6(b) and
25 Regulation 2773.

26 (f) CHOE was not aware that non-licensee Maria
27 Hernandez was soliciting loan modifications and collecting

1 advance fees for loan modification transactions. This
2 demonstrated a lack of responsibility by the corporate officer
3 in charge, in violation of Code Section 10159.2 and Regulation
4 2725.

5 12.

6 The conduct of Respondents APEX and CHOE, described
7 in Paragraph 11, above, violated the Code and the Regulations
8 as set forth below:

9	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
10	11(a)	Code Section 10145 and Regulation
11		2831
12	11(b)	Code Sections 10145, 10146 and
13		10176(e) and Regulation 2832
14	11(c)	Code Section 10240 and Regulation
15		2840
16	11(d)	Code Section 10236.4(b)
17	11(e)	Code Section 10140.6(b) and
18		Regulation 2773
19	11(f)	Code Section 10159.2 and
20		Regulation 2725 (CHOE)
21		
22		

23 The foregoing violations constitute cause for the
24 suspension or revocation of the real estate license and license
25 rights of APEX and CHOE, under the provisions of Code Sections
26 10176(e), 10177(d) and/or 10177(g), and CHOE under the
27 provisions of Code Section 10177(h).

1
2 The overall conduct of Respondent CHOE constituted a
3 failure on his part, as an officer designated by a corporate
4 broker licensee, to exercise reasonable supervision and control
5 over the licensed activities of APEX as required by Code
6 Section 10159.2, and to keep APEX in compliance with the Real
7 Estate Law, and is cause for the suspension or revocation of
8 the real estate license and license rights of CHOE pursuant to
9 the provisions of Code Sections 10177(d), 10177(g) and
10 10177(h).

11 WHEREFORE, Complainant prays that a hearing be
12 conducted on the allegations of this Accusation and that upon
13 proof thereof, a decision be rendered imposing disciplinary
14 action against all the licenses and license rights of
15 Respondents APEX FINANCIAL & INVESTMENTS INC and FRANCIS Y.
16 CHOE under the Real Estate Law, and for such other and further
17 relief as may be proper under other applicable provisions of
18 law.

19 Dated at Los Angeles, California
20 this 19 day of October, 2011.

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22 
23 _____
24 Robin Trujillo
25 Deputy Real Estate Commissioner

26 cc: APEX FINANCIAL & INVESTMENTS INC
27 FRANCIS Y. CHOE
Robin Trujillo
Sacto.

FILED

SEP 08 2011

DEPARTMENT OF REAL ESTATE
BY: Shirahed H. Lewis

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Respondents.

No. H-37510 LA
A C C U S A T I O N

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16 broker. Since March 2, 2003, APEX has been licensed by the
17 Department as a corporate real estate broker by and through
18 CHOE, as the designated officer and broker responsible,
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21 by APEX's officers, agents and employees, including CHOE.

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24 Name Statement with the Los Angeles Registrar-Recorder/
25 County Clerk for "Home Assistance & Relief" ("HAR"). CHOE
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19 constitutes an advance fee agreement within the meaning of Code
20 Section 10026. APEX and CHOE failed to submit the advance fee
21 agreement described above to the Commissioner ten days before
22 using it, in violation of Code Section 10085 and Section 2970
23 of Title 10, California Code of Regulations ("Regulations").
24 Said conduct, acts and/or omissions of Respondents APEX and
25 CHOE constitutes cause to suspend or revoke the licenses and
26 license rights of APEX and CHOE pursuant to Code Sections
27 10177(d) and/or 10177(g).

8.

The loan modification agreement described in paragraph 6 above used the fictitious business name of "Home Assistance & Relief" when APEX did have that fictitious business name licensed with the Department, in violation of Code Section 10159.5 and Regulation 2731. This provides cause for the suspension or revocation of the licenses and license rights of APEX and CHOE pursuant to Code Sections 10177(d) and/or 10177(g).

9.

The overall conduct of Respondent CHOE constituted a failure on her part, as an officer designated by a corporate broker licensee, to exercise reasonable supervision and control over the licensed activities of APEX as required by Code Section 10159.2, and to keep APEX in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of CHOE pursuant to the provisions of Code Sections 10177(d), 10177(g) and 10177(h).

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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all the licenses and license rights of
5 Respondents APEX FINANCIAL & INVESTMENTS INC and FRANCIS Y.
6 CHOE under the Real Estate Law, and for such other and further
7 relief as may be proper under other applicable provisions of
8 law.

9 Dated at Los Angeles, California

10 this 6 day of September, 2011

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14 Robin Trujillo
15 Deputy Real Estate Commissioner
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25 CC: APEX FINANCIAL & INVESTMENTS INC
26 FRANCIS Y. CHOE
27 Robin Trujillo
Sacto.