WAYNE STRUMPFER
Acting California Corporations Commissioner
ALAN S. WEINGER (CA BAR NO. 86717)
Acting Deputy Commissioner
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Attorneys for Complainant

BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE CALIFORNIA CORPORATIONS COMMISSIONER, Complainant, vs. KOBAY FINANCIAL CORP. Respondent.	File No.: 603-8785 ORDER REVOKING FINANCE LENDERS LICENSE

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

Dated: November 15, 2005

WAYNE STRUMPFER
Acting California Corporations Commissioner

By _____
Patricia R. Speight
Special Administrator
California Finance Lenders Law

State of California – Department of Corporations

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.

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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.) (CFLL). 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 CFLL (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-CFLL 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 CFLL 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 CFLL, and therefore, pursuant to Financial Code section 22059, CFLL broker licensees such as Kobay are unable to broker loans to Accubanc under their CFLL 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 CFLL 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:

Loan	Fees Per Final HUD-1	Fees Disclosed
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