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**FILED**

JUN 29 2009

DEPARTMENT OF REAL ESTATE

BY: *D. Kelly*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of	)	H-34578 LA
	)	
NEW GENERATION REALTY INC.;	)	
doing business as Homes &	)	
Estates Real Estate Escrow	)	
Division, Homes & Estates Real	)	
Estate Mortgage, and Homes &	)	
Estates Real Estate; ISSY	)	
KANYUBURE TINDIMWEBWA and	)	
FRANCISCO GUILLERMO HERNANDEZ,	)	
individually and as former and	)	
current designated officers of	)	
New Generation Realty Inc.	)	
	)	
Respondents	)	

ORDER NUNC PRO TUNC MODIFYING

DECISION

It having been called to the attention of the Real Estate Commissioner that there are errors in the Decision by Stipulation and Agreement dated March 31, 2009, effective May 22,

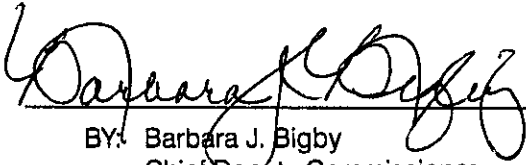
1 2009, and good cause appearing therefor, the Stipulation and  
2 Agreement is amended as follows:

3 Page 9, Paragraph V., line 26 is amended to delete "the  
4 restricted license" and substitute "this Decision".

5  
6 This Order, nunc pro tunc to March 31, 2009, effective  
7 May 22, 2009, shall become effective immediately.

8  
9 IT IS SO ORDERED 6-26-09

10  
11 JEFF DAVI  
12 Real Estate Commissioner

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14   
15 BY: Barbara J. Bigby  
16 Chief Deputy Commissioner

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1 Department of Real Estate  
2 320 West 4th Street, Ste. 350  
3 Los Angeles, California 90013-1105  
4 Telephone: (213) 576-6982 (office)

**FILED**

APR 23 2009

DEPARTMENT OF REAL ESTATE  
BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )	No. H-34578 LA
12 )	L-2008010086
13 NEW GENERATION REALTY INC., )	
14 doing business as Homes & Estates )	
15 Real Estate Escrow Division, )	
16 Homes & Estates Real Estate )	<u>STIPULATION</u>
17 Mortgage, and Homes & Estates )	<u>AND</u>
18 Real Estate; ISSY KANYUBURE )	<u>AGREEMENT</u>
19 TINDIMWEBWA and FRANCISCO )	
20 GUILLERMO HERNANDEZ, individually )	
21 and as former and current )	
22 designated officers of New )	
23 Generation Realty Inc., )	
24 Respondents. )	

20 It is hereby stipulated by and between Respondents  
21 NEW GENERATION REALTY INC.; ISSY KANYUBURE TINDIMWEBWA, and  
22 FRANCISCO GUILLERMO HERNANDEZ, individually and as former and  
23 current designated officers of New Generation Realty Inc.,  
24 (sometimes collectively referred to as "Respondents"),  
25 represented by Aimee E. Dominguez, Esq., and the Complainant,  
26 acting by and through Elliott Mac Lennan, Counsel for the

1 Department of Real Estate, as follows for the purpose of settling  
2 and disposing of the First Amended Accusation ("Accusation")  
3 filed on July 24, 2008, in this matter:

4 1. All issues which were to be contested and all  
5 evidence which was to be presented by Complainant and Respondents  
6 at a formal hearing on the Accusation, which hearing was to be  
7 held in accordance with the provisions of the Administrative  
8 Procedure Act ("APA"), shall instead and in place thereof be  
9 submitted solely on the basis of the provisions of this  
10 Stipulation and Agreement ("Stipulation").

11 2. Respondents have received, read and understand the  
12 Statement to Respondent, the Discovery Provisions of the APA and  
13 the Accusation filed by the Department of Real Estate in this  
14 proceeding.

15 3. Respondents timely filed a Notice of Defense  
16 pursuant to Section 11506 of the Government Code for the purpose  
17 of requesting a hearing on the allegations in the Accusation.  
18 Respondents hereby freely and voluntarily withdraw said Notice of  
19 Defense. Respondents acknowledge that they understand that by  
20 withdrawing said Notice of Defense they thereby waive their right  
21 to require the Commissioner to prove the allegations in the  
22 Accusation at a contested hearing held in accordance with the  
23 provisions of the APA and that they will waive other rights  
24 afforded to them in connection with the hearing such as the right  
25 to present evidence in their defense and the right to cross-  
26

27

1 examine witnesses.

2 4. This Stipulation is based on the factual  
3 allegations contained in the Accusation. In the interest of  
4 expedience and economy, Respondents choose not to contest these  
5 allegations, but to remain silent and understand that, as a  
6 result thereof, these factual allegations, without being admitted  
7 or denied, will serve as a prima facie basis for the disciplinary  
8 action stipulated to herein. The Real Estate Commissioner shall  
9 not be required to provide further evidence to prove said factual  
10 allegations.

11 5. This Stipulation is made for the purpose of  
12 reaching an agreed disposition of this proceeding and is  
13 expressly limited to this proceeding and any other proceeding or  
14 case in which the Department of Real Estate ("Department"), the  
15 state or federal government, or any agency of this state, another  
16 state or federal government is involved.

17 6. It is understood by the parties that the Real  
18 Estate Commissioner may adopt this Stipulation as his Decision in  
19 this matter thereby imposing the penalty and sanctions on  
20 Respondents' real estate licenses and license rights as set forth  
21 in the "Order" herein below. In the event that the Commissioner  
22 in his discretion does not adopt the Stipulation, it shall be  
23 void and of no effect and Respondents shall retain the right to a  
24 hearing and proceeding on the Accusation under the provisions of  
25 the APA and shall not be bound by any stipulation or waiver made  
26  
27

1 herein.

2 7. The Order or any subsequent Order of the Real  
3 Estate Commissioner made pursuant to this Stipulation shall not  
4 constitute an estoppel, merger or bar to any further  
5 administrative or civil proceedings by the Department of Real  
6 Estate with respect to any matters which were not specifically  
7 alleged to be causes for Accusation in this proceeding but do  
8 constitute a bar, estoppel and merger as to any allegations  
9 actually contained in the Accusations against Respondent herein.

10 8. Respondents understand that by agreeing to this  
11 Stipulation, Respondents agree to pay, pursuant to Business and  
12 Professions Code Section 10148, the cost of the audit. The  
13 amount of said cost for the audit is \$8,237.48.

14 9. Respondents have received, read, and understand the  
15 "Notice Concerning Costs of Subsequent Audit". Respondents  
16 further understand that by agreeing to this Stipulation, the  
17 findings set forth below in the Determination of Issues become  
18 final, and the Commissioner may charge Respondents for the cost  
19 of any subsequent audit conducted pursuant to Business and  
20 Professions Code Section 10148 to determine if the violations  
21 have been corrected. The maximum cost of the subsequent audit  
22 will not exceed \$8,237.48.

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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed  
2 that the following determination of issues shall be made:  
3

I.

4  
5 The conduct, acts or omissions of NEW GENERATION REALTY  
6 INC., ISSY KANYUBURE TINDIMWEBWA and FRANCISCO GUILLERMO  
7 HERNANDEZ, as described in Paragraph 4, above, are in violation  
8 of Sections 10145 and 10240 of the Business and Professions Code  
9 ("Code") and Sections 2725, 2831, 2831.1, 2831.2, 2832(a) and  
10 2950(d) of Title 10, Chapter 6 of the California Code of  
11 Regulations ("Regulations") and is a basis for discipline of  
12 Respondents' license and license rights as violations of the Real  
13 Estate Law pursuant to Code Sections 10177(d).

ORDER

14  
15 WHEREFORE, THE FOLLOWING ORDER is hereby made:  
16

I.

17  
18 The license and licensing rights of Respondents NEW  
19 GENERATION REALTY INC., ISSY KANYUBURE TINDIMWEBWA and FRANCISCO  
20 GUILLERMO HERNANDEZ, under the Real Estate Law, are suspended for  
21 a period of sixty (60) days from the effective date of this

22 Decision:

23 ///

24 ///

25 ///

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1 A. Provided, however, that if Respondents request, the  
2 initial thirty (30) days of said suspension (or a portion  
3 thereof) shall be stayed for two (2) years upon condition that:

4 1. Each Respondent pays a monetary penalty pursuant to  
5 Section 10175.2 of the Business and Professions Code for a  
6 monetary penalty of:

7 \$3,000 NEW GENERATION REALTY INC.

8 \$1,500 ISSY KANYUBURE TINDIMWEBWA

9 \$1,500 FRANCISCO GUILLERMO HERNANDEZ,

10 or \$6,000 total.

11 2. Said payment shall be in the form of a cashier's  
12 check or certified check made payable to the Recovery Account of  
13 the Real Estate Fund. Said check must be received by the  
14 Department prior to the effective date of the Decision in this  
15 matter.

16 3. No further cause for disciplinary action against  
17 the real estate license of Respondents occur within two (2) years  
18 from the effective date of the Decision in this matter.

19 4. If Respondents fail to pay the monetary penalty in  
20 accordance with the terms of the Decision, the Commissioner may,  
21 without a hearing, order the immediate execution of all or any  
22 part of the stayed suspension, in which event the Respondent  
23 shall not be entitled to any repayment nor credit, prorated or  
24 otherwise, for money paid to the Department under the terms of  
25 this Decision.



1 5. If Respondents pay the monetary penalty and if no  
2 further cause for disciplinary action against the real estate  
3 license of Respondent occurs within two (2) years from the  
4 effective date of the Decision, the stay hereby granted shall  
5 become permanent.

6 B. The remaining thirty (30) days of the sixty (60)  
7 day suspension shall be stayed for two (2) years upon the  
8 following terms and conditions:

9 (a) Respondents shall obey all laws, rules and  
10 regulations governing the rights, duties and responsibilities of  
11 a real estate licensee in the State of California; and

12 (b) That no final subsequent determination be made  
13 after hearing or upon stipulation, that cause for disciplinary  
14 action occurred within two (2) years from the effective date of  
15 this Decision. Should such a determination be made, the  
16 Commissioner may, in his discretion, vacate and set aside the  
17 stay order and reimpose all or a portion of the stayed  
18 suspension. Should no such determination be made, the stay  
19 imposed herein shall become permanent.  
20

21 II.

22 Pursuant to Section 10148 of the Business and  
23 Professions Code, Respondents NEW GENERATION REALTY INC., ISSY  
24 KANYUBURE TINDIMWEBWA and FRANCISCO GUILLERMO HERNANDEZ, shall  
25 pay the Commissioner's reasonable cost for (a) the audit which  
26 led to this disciplinary action (b) a subsequent audit to  
27

1 determine if Respondents are now in compliance with the Real  
2 Estate Law. The cost of the audit which led to this disciplinary  
3 action is \$8,237.48. In calculating the amount of the  
4 Commissioner's reasonable cost, the Commissioner may use the  
5 estimated average hourly salary for all persons performing audits  
6 of real estate brokers, and shall include an allocation for  
7 travel time to and from the auditor's place of work. Said amount  
8 for the prior and subsequent audits shall not exceed \$16,474.96.

9 Respondents shall pay such cost within 60 days of  
10 receiving an invoice from the Commissioner detailing the  
11 activities performed during the audit and the amount of time  
12 spent performing those activities.

13 The Commissioner may suspend the license of Respondents  
14 pending a hearing held in accordance with Section 11500, et seq.,  
15 of the Government Code, if payment is not timely made as provided  
16 for herein, or as provided for in a subsequent agreement between  
17 the Respondent and the Commissioner. The suspension shall remain  
18 in effect until payment is made in full or until Respondents  
19 enter into an agreement satisfactory to the Commissioner to  
20 provide for payment, or until a decision providing otherwise is  
21 adopted following a hearing held pursuant to this condition.

23 III.

24 All licenses and licensing rights of Respondents ISSY  
25 KANYUBURE TINDIMWEBWA and FRANCISCO GUILLERMO HERNANDEZ are  
26 indefinitely suspended unless or until Respondents provide proof  
27

1 satisfactory to the Commissioner, of having taken and  
2 successfully completed the continuing education course on trust  
3 fund accounting and handling specified in paragraph (3) of  
4 subdivision (a) of Section 10170.5 of the Business and  
5 Professions Code. Proof of satisfaction of this requirement  
6 includes evidence that Respondent has successfully completed the  
7 trust fund account and handling continuing education course by  
8 the effective date of the Decision or within 120 days prior to  
9 the effective date of the Decision.

10 IV.

11 Respondent ISSY KANYUBURE TINDIMWEBWA and FRANCISCO  
12 GUILLERMO HERNANDEZ shall, within nine (9) months from the  
13 effective date of this Decision, present evidence satisfactory to  
14 the Real Estate Commissioner that Respondents have, since the  
15 most recent issuance of an original or renewal real estate  
16 license, taken and successfully completed the continuing  
17 education requirements of Article 2.5 of Chapter 3 of the Real  
18 Estate Law for renewal of a real estate license. If Respondents  
19 fail to satisfy this condition, the Commissioner may order the  
20 suspension of the restricted license until Respondents present  
21 such evidence. The Commissioner shall afford Respondent the  
22 opportunity for a hearing pursuant to the Administrative  
23 Procedure Act to present such evidence.

24 V.

25 Respondent FRANCISCO GUILLERMO HERNANDEZ shall within  
26 six months from the effective date of the restricted license,  
27

*None Pro June  
Order coming →  
re: this wording*

1 take and pass the Professional Responsibility Examination  
2 administered by the Department including the payment of the  
3 appropriate examination fee. If Respondent fails to satisfy this  
4 condition, the Commissioner may order suspension of the  
5 restricted license until respondent passes the examination.

6 DATED: 1-28-09 ELM  
7 ELLIOTT MAC LENNAN, Counsel for  
8 the Department of Real Estate

9 \* \* \*

10 EXECUTION OF THE STIPULATION

11 We have read the Stipulation and discussed it with our  
12 counsel. Its terms are understood by us and are agreeable and  
13 acceptable to us. We understand that we are waiving rights given  
14 to us by the California Administrative Procedure Act (including  
15 but not limited to Sections 11506, 11508, 11509 and 11513 of the  
16 Government Code), and we willingly, intelligently and voluntarily  
17 waive those rights, including the right of requiring the  
18 Commissioner to prove the allegations in the Accusation at a  
19 hearing at which we would have the right to cross-examine  
20 witnesses against us and to present evidence in defense and  
21 mitigation of the charges.

22 MAILING AND FACSIMILE

23 Respondents (1) shall mail the original signed  
24 signature page of the stipulation herein to Elliott Mac Lennan:  
25 Attention: Legal Section, Department of Real Estate, 320 W.  
26 Fourth St., Suite 350, Los Angeles, California 90013-1105.  
27

1 Respondents shall also (2) facsimile a copy of signed signature  
 2 page, to the Department at the following telephone/fax number:  
 3 (213) 576-6917, Attention: Elliott Mac Lennan.

4 A facsimile constitutes acceptance and approval of the  
 5 terms and conditions of this stipulation. Respondents agree,  
 6 acknowledge and understand that by electronically sending to the  
 7 Department a facsimile copy of Respondents' actual signature as  
 8 it appears on the stipulation that receipt of the facsimile copy  
 9 by the Department shall be as binding on Respondents as if the  
 10 Department had received the original signed stipulation.

11  
 12 DATED: 1/28/09

*Issy Kanyubure Tindimwebwa*

13 NEW GENERATION REALTY INC., a  
 14 corporate real estate broker,  
 15 BY: ISSY KANYUBURE TINDIMWEBWA  
 16 D.O., Respondent

17 DATED: 1/28/09

*Issy Kanyubure Tindimwebwa*

18 ISSY KANYUBURE TINDIMWEBWA,  
 19 individually and as designated  
 20 officer of New Generation Realty  
 21 Inc., Respondent

22 DATED: 1/28/09

*Francisco Guillermo Hernandez*

23 FRANCISCO GUILLERMO HERNANDEZ,  
 24 individually and as designated  
 25 officer of New Generation Realty  
 26 Inc., Respondent

27 DATED: 1/28/09

*Aimee E. Dominguez*

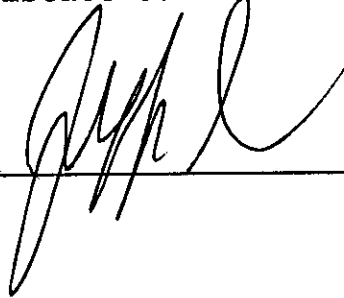
AIMEE E. DOMINGUEZ, ESQ.  
 Attorney for Respondents  
 Approved as to form and content

\* \* \*

1                   The foregoing Stipulation and Agreement is hereby  
2  
3 adopted as my Decision as to Respondents NEW GENERATION REALTY  
4 INC., ISSY KANYUBURE TINDIMWEBWA and FRANCISCO GUILLERMO  
5 HERNANDEZ, individually and as former and current designated  
6 officers of New Generation Realty Inc. and shall become effective  
7 at 12 o'clock noon on \_\_\_\_\_ May 22, 2009.

8                   IT IS SO ORDERED \_\_\_\_\_ 3/31/09, 2009.

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10                   JEFF DAVI  
11                   Real Estate Commissioner

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1 ELLIOTT MAC LENNAN, SBN 66674  
2 Department of Real Estate  
3 320 West 4th Street, Ste. 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)  
6 -or- (213) 576-6982 (office)

**FILED**

JUL 24 2008

DEPARTMENT OF REAL ESTATE

BY: *Gray*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \* \*

11 In the Matter of the Accusation of )  
12 )  
13 NEW GENERATION REALTY INC.; doing )  
14 business as Homes & Estates )  
15 Real Estate Escrow Division, )  
16 Homes & Estates Real Estate )  
17 Mortgage, and Homes & Estates )  
18 Real Estate; ISSY KANYUBURE )  
19 TINDIMWEBWA and FRANCISCO )  
20 GUILLERMO HERNANDEZ, individually )  
21 and as former and current )  
22 designated officers of New )  
23 Generation Realty Inc. )

24 Respondents. )

No. H-34578 LA

FIRST AMENDED

ACCUSATION

25 The Accusation filed on December 11, 2007, is amended in  
26 its entirety as follows:

27 The Complainant, Robin Trujillo, a Deputy Real Estate  
Commissioner of the State of California, for cause of Accusation  
against NEW GENERATION REALTY INC. dba Homes & Estates Real  
Estate Escrow Division, Homes & Estates Real Estate Mortgage, and

1 Homes & Estates Real Estate; ISSY KANYUBURE TINDIMWEBWA and  
2 FRANCISCO GUILLERMO HERNANDEZ, individually and as former and  
3 current designated officers of New Generation Realty Inc.,  
4 alleges as follows:

5 1.

6 The Complainant, Robin Trujillo, acting in her official  
7 capacity as a Deputy Real Estate Commissioner of the State of  
8 California, makes this Accusation against NEW GENERATION REALTY  
9 INC., ISSY KANYUBURE TINDIMWEBWA and FRANCISCO GUILLERMO  
10 HERNANDEZ.

11 2.

12 All references to the "Code" are to the California  
13 Business and Professions Code and all references to "Regulations"  
14 are to Title 10, Chapter 6, California Code of Regulations.

15 LICENSE HISTORY

16 3.

17 A. At all times mentioned, NEW GENERATION REALTY INC,  
18 ("NEW GENERATION") was licensed or had license rights issued by  
19 the Department of Real Estate ("Department") as a real estate  
20 broker. On May 10, 2001, NEW GENERATION was originally licensed  
21 as a real estate broker.

22 B. At all times mentioned, KANYUBURE TINDIMWEBWA  
23 ("TINDIMWEBWA") was licensed or had license rights issued by the  
24 Department as a real estate broker. On November 3, 1986,  
25 TINDIMWEBWA was originally licensed as a real estate salesperson.  
26 On May 2, 2002, TINDIMWEBWA was originally licensed as a real  
27



1 estate broker. From May 10, 2005 to January 29, 2007,  
2 TINDIMWEBWA was the designated officer of NEW GENERATION.

3 C.1 At all times mentioned, FRANCISCO GUILLERMO  
4 HERNANDEZ ("HERNANDEZ") was licensed or had license rights issued  
5 by the Department as a restricted real estate broker. On May 2,  
6 1990, HERNANDEZ was originally licensed as a real estate  
7 salesperson. On April 4, 2004, HERNANDEZ was originally licensed  
8 as a real estate broker. Commencing on January 29, 2007,  
9 HERNANDEZ has been the designated officer of TRISTAR replacing  
10 TINDIMWEBWA in place and stead.

11 C.2. Effective March 30, 2006, in H-30632, HERNANDEZ'  
12 real estate broker application was denied with a right to a  
13 restricted broker license, as more fully set forth below in  
14 Paragraph 14.

15 D. At all times mentioned herein, NEW GENERATION was  
16 formerly licensed by the Department as a corporate real estate  
17 broker formerly by and through TINDIMWEBWA, and currently through  
18 HERNANDEZ as the designated officers and brokers responsible,  
19 pursuant to Code Section 10159.2 of the Business and Professions  
20 Code for supervising the activities requiring a real estate  
21 license conducted on behalf NEW GENERATION by NEW GENERATION'S  
22 officers, agents and employees, including TINDIMWEBWA and  
23 HERNANDEZ.

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NEW GENERATION REALTY INC.

BROKERAGE AND LICENSED ACTIVITIES

4.

At all times mentioned, in the City of Downey, County of Los Angeles, NEW GENERATION, TINDIMWEBWA and HERNANDEZ acted as real estate brokers and conducted licensed activities within the meaning of:

A. Code Section 10131(a). NEW GENERATION, TINDIMWEBWA and HERNANDEZ operated a mortgage and loan brokerage dba Home & Estates Real Estate;

B. Code Section 10131(d). NEW GENERATION, TINDIMWEBWA and HERNANDEZ operated a mortgage and loan brokerage dba Home & Estates Real Estate Mortgage; and

C. In addition, NEW GENERATION, TINDIMWEBWA and HERNANDEZ conducted broker-controlled escrows through its escrow division, Home & Estates Real Estate Escrow Division, under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

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FIRST CAUSE OF ACTION

NEW GENERATION REALTY INC.

ISSY KANYUBURE TINDIMWEBWA AS DESIGNATED OFFICER

AUDIT EXAMINATION

5.

On July 31, 2007, the Department completed an audit examination of the books and records of NEW GENERATION pertaining to the mortgage and loan and broker-escrow activities described in Paragraph 4 that require a real estate license. The audit examination covered a period of time beginning on January 1, 2005 to December 31, 2006. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 060211 and LA 060237 and the exhibits and work papers attached to said audit report.

NEW GENERATION REALTY INC.

ISSY KANYUBURE TINDIMWEBWA AS DESIGNATED OFFICER

TRUST ACCOUNTS

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, NEW GENERATION accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by NEW GENERATION and thereafter made deposits and or disbursements of such funds. From time to time

1 herein mentioned during the audit period, said trust funds were  
2 deposited and/or maintained by NEW GENERATION in the bank  
3 accounts as follows:

4 "New Generation Realty Inc. dba Homes and Estate Real Estate -  
5 Escrow Division  
6 Account No. 83220681"  
7 East West Bank  
8 Los Angeles, CA 90067 (T/A #1)

9 "New Generation Realty Inc. dba Homes and Estate Real Estate -  
10 Escrow Division  
11 Account No. 82335068"  
12 East West Bank  
13 Los Angeles, CA 90067 (T/A #2)

14 NEW GENERATION REALTY INC.

15 ISSY KANYUBURE TINDIMWEBWA AS DESIGNATED OFFICER

16 VIOLATIONS OF THE REAL ESTATE LAW

17 7.

18 In the course of activities described in Paragraphs 4  
19 and 6, above, and during the examination period described in  
20 Paragraph 5, Respondents NEW GENERATION and TINDIMWEBWA, acted in  
21 violation of the Code and the Regulations in that they:

22 (a) Permitted, allowed or caused the disbursement of  
23 trust funds from the trust accounts where the disbursement of  
24 funds reduced the total of aggregate funds in the combined escrow  
25 trust accounts, to an amount which, on December 31, 2006, was  
26 \$8,163.32, less than the existing aggregate trust fund liability  
27 of NEW GENERATION to every principal who was an owner of said

1 funds, without first obtaining the prior written consent of the  
2 owners of said funds, as required by Code Section 10145 and  
3 Regulations 2832.1, 2950(d), 2950(g) and 2951.

4 (b) The escrow trust accounts were not in the name of  
5 the broker as trustee at a bank or other financial institution,  
6 nor designated as a trust accounts, in violation of Code Section  
7 10145 of the Code and Regulations 2832(a), 2950(d) and 2951.

8 (c) Failed to maintain an adequate control record in  
9 the form of a columnar record in chronological order of all trust  
10 funds received, deposited and disbursed by the escrow trust  
11 accounts, in violation of Code Section 10145 and Regulations  
12 2831, 2950(d), 2950(g) and 2951.

13 (d) Failed to perform a monthly reconciliation of the  
14 balance of all separate beneficiary or transaction records  
15 maintained pursuant to Regulation 2831.1 with the record of all  
16 trust funds received and disbursed by the escrow trust accounts,  
17 as required by Code Section 10145 and Regulations 2831.2, 2950(d)  
18 and 2951.

19 (e) Failed to maintain a separate record for each  
20 beneficiary or transaction, thereby failing to account for all  
21 trust funds received, deposited and disbursed for the escrow  
22 trust accounts, in violation of Code Section 10145 and Regulation  
23 2831.1, 2950(d) and 2951.

24 (f) Failed to retain a true and correct copy of a  
25 Department of Real Estate approved Mortgage Loan Disclosure  
26  
27

1 Statement signed by the broker for borrowers Linares, Jimenez,  
2 Vasilopoulos, Hernandez, De Santiagor, Ortiz, Serpas and Lobata,  
3 as required by Code Section 10240 and Regulation 2840; and

4 (g) TINDIMWEBWA failed to supervise NEW GENERATION and  
5 had no system in place for regularly monitoring its compliance  
6 with the Real Estate Law especially in regard to establishing  
7 policies to review trust fund handling and escrow activities, in  
8 violation of Code Sections 10159.2, 10177(h) and Regulation 2725.

9 NEW GENERATION REALTY INC.

10 ISSY KANYUBURE TINDIMWEBWA AS DESIGNATED OFFICER

11 DISCIPLINARY STATUES AND REGULATIONS

12 8.

13 The conduct of Respondents NEW GENERATION and  
14 TINDIMWEBWA described in Paragraph 7, above, violated the Code  
15 and the Regulations as set forth below:

17 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
18 7(a)	Code Section 10145 and Regulations 19 2832.1, 2950(d), 2950(g) and 2951
21 7(b)	Code Section 10145 and Regulations 22 2832(a), 2950(g) and 2951
24 7(c)	Code Section 10145 and Regulation 25 2831, 2950(d) and 2951



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SECOND CAUSE OF ACTION

NEW GENERATION REALTY INC.

FRANCISCO GUILLERMO HERNANDEZ AS DESIGNATED OFFICER

AUDIT EXAMINATION

9.

On May 13, 2008, the Department completed an audit examination of the books and records of NEW GENERATION pertaining to the mortgage and loan and broker-escrow activities described in Paragraph 4 that require a real estate license. The audit examination covered a period of time beginning on February 1, 2007 to December 31, 2007. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 070186, LA 070271 and LA 070272 and the exhibits and work papers attached to said audit report.

NEW GENERATION REALTY INC.

FRANCISCO GUILLERMO HERNANDEZ AS DESIGNATED OFFICER

TRUST ACCOUNTS

10.

The trust accounts in Paragraph 6 are the same.

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NEW GENERATION REALTY INC.

FRANCISCO GUILLERMO HERNANDEZ AS DESIGNATED OFFICER

VIOLATIONS OF THE REAL ESTATE LAW

11.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 9, Respondents NEW GENERATION and HERNANDEZ, acted in violation of the Code and the Regulations in that they:

(a) Permitted, allowed or caused the disbursement of trust funds from the trust accounts where the disbursement of funds reduced the total of aggregate funds in the combined escrow trust accounts, to an amount which, on December 31, 2007, was \$905.00, less than the existing aggregate trust fund liability of NEW GENERATION to every principal who was an owner of said funds, without first obtaining the prior written consent of the owners of said funds, as required by Code Section 10145 and Regulations 2832.1, 2950(d), 2950(g) and 2951.

(b) Failed to maintain an adequate control record in the form of a columnar record in chronological order of all trust funds received, deposited and disbursed by the escrow trust accounts, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951. Earnest money deposits for buyers Gonzalez, Riveros and Sofeso. There was no accounting for credit and appraisal fees collected in escrow.

1 (c) Failed to maintain a separate record for each  
2 beneficiary or transaction, thereby failing to account for all  
3 trust funds received, deposited and disbursed for the escrow  
4 trust accounts, in violation of Code Section 10145 and Regulation  
5 2831.1, 2950(d) and 2951. There was no accounting for credit and  
6 appraisal fees collected in escrow.

7 (d) Misrepresented to the seller that NEW GENERATION  
8 held an earnest money deposit for the Riveros purchase  
9 transaction, in violation of Code Section 10176(a) and/or  
10 10177(g).

11 (e) Failed to place trust funds, including earnest  
12 money deposits for buyers Loya, Sofeso, Gonzales and Bradley,  
13 accepted on behalf of another into the hands of the owner of the  
14 funds, a neutral escrow depository or into a trust fund account  
15 in the name of the trustee at a bank or other financial  
16 institution not later than three business days following receipt  
17 of the funds by the broker or by the broker's salesperson, as  
18 required by Code Section 10145 and Regulations 2832(d), 2950(d)  
19 and 2951.  
20

21 (f) Mixed and commingled trust funds and personal funds  
22 by depositing appraisal and credit report fees received from  
23 escrow into NEW GENERATION's general operating account and  
24 issuing checks from said account to the appraisers or credit  
25 companies after the escrow checks were deposited, in violation of  
26 Code Sections 10145 and 10176(e). Credit report and/or appraisal  
27

1 fees were collected from escrow companies in the loan  
2 transactions for Piedra, De Leon, Campos and Flores.

3 (g) HERNANDEZ failed to supervise NEW GENERATION and  
4 had no system in place for regularly monitoring its compliance  
5 with the Real Estate Law especially in regard to establishing  
6 policies to review trust fund handling and escrow activities, in  
7 violation of Code Sections 10159.2, 10177(h) and Regulation 2725.

8 NEW GENERATION REALTY INC.

9 FRANCISCO GUILLERMO HERNANDEZ AS DESIGNATED OFFICER

10 DISCIPLINARY STATUTES AND REGULATIONS

11 12.

12 The conduct of Respondents NEW GENERATION and HERNANDEZ  
13 described in Paragraph 11, above, violated the Code and the  
14 Regulations as set forth below:

15 <u>PARAGRAPH</u>	16 <u>PROVISIONS VIOLATED</u>
17 11(a)	18 Code Section 10145 and Regulations 19 2832.1, 2950(d), 2950(g) and 2951
20 11(b)	21 Code Section 10145 and Regulation 22 2831, 2950(d) and 2951
23 11(c)	24 Code Section 10145 and Regulation 25 2831.1, 2950(d) and 2951

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- 11(d) Code Sections 10176(a) and/or 10177(g)
  
- 11(e) Code Section 10145 and Regulations 2832(d), 2950(d) and 2951
  
- 11(f) Code Sections 10145 and 10176(e)
  
- 11(g) Code Sections 10159.2 and 10177(h) and Regulation 2725

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of NEW GENERATION and HERNANDEZ, under the provisions of Code Sections 10176(a), 10176(e), 10177(d) and/or 10177(g) and 10177(h)).

13.

The overall conduct of Respondents NEW GENERATION, TINDIMWEBWA and HERNANDEZ constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondents NEW GENERATION, TINDIMWEBWA and HERNANDEZ pursuant to Code Section 10177(g).

PRIOR DEPARTMENT ACTION


14.

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2  
3 On March 25, 2004, in Case No. H-30632 LA, a  
4 Stipulation and Waiver became effective against HERNANDEZ, for  
5 violation of Code Sections 480 and 10177(b) of Title 10, Chapter  
6 6, California Code of Regulations based on a Statement of Issues  
7 filed on January 21, 2004. Respondent HERNANDEZ' application for  
8 a real estate broker licenses was denied with a right to a  
9 restricted broker license on terms and conditions.

10 WHEREFORE, Complainant prays that a hearing be  
11 conducted on the allegations of this Accusation and that upon  
12 proof thereof, a decision be rendered imposing disciplinary  
13 action against the license and license rights of Respondents NEW  
14 GENERATION REALTY INC., ISSY KANYUBURE TINDIMWEBWA and FRANCISCO  
15 GUILLERMO HERNANDEZ, under the Real Estate Law (Part 1 of  
16 Division 4 of the Business and Professions Code) and for such,  
17 other and further relief as may be proper under other applicable  
18 provisions of law.  
19

20 Dated at Los Angeles, California

21 this 24 day of July 2008.

  
22 Deputy Real Estate Commissioner

23  
24 cc: New Generation Realty Inc.  
25 c/o Francisco Guillermo Hernandez D.O.  
26 Issy Kanyubure Tindimwebwa former D.O.  
27 Robin Trujillo  
Sacto.  
Audits - Darryl Thomas

1 ELLIOTT MAC LENNAN, SBN 66674  
2 Department of Real Estate  
3 320 West 4th Street, Ste. 350  
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)  
6 -or- (213) 576-6982 (office)

**FILED**

DEC 11 2007

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \* \* \*

11 In the Matter of the Accusation of )

No. H-34578 LA

12 NEW GENERATION REALTY INC.; doing )  
13 business as Home & Estates )  
14 Real Estate Escrow Division, )  
15 Home & Estate Real Estate )  
16 Mortgage, and Homes & Estates )  
17 Real Estate; ISSY KANYUBURE )  
18 TINDIMWEBWA, individually and as )  
19 designated officer of New )  
20 Generation Realty Inc. )

A C C U S A T I O N

21 Respondents. )

22 The Complainant, Robin Trujillo, a Deputy Real Estate  
23 Commissioner of the State of California, for cause of Accusation  
24 against NEW GENERATION REALTY INC. dba Home & Estates Real Estate  
25 Escrow Division, Home & Estate Real Estate Mortgage, and Homes &  
26 Estates Real Estate; and ISSY KANYUBURE TINDIMWEBWA, individually  
27 and as designated officer of New Generation Realty Inc., alleges  
as follows:

1.

1 The Complainant, Robin Trujillo, acting in her official  
2 capacity as a Deputy Real Estate Commissioner of the State of  
3 California, makes this Accusation against NEW GENERATION REALTY  
4 INC. and ISSY KANYUBURE TINDIMWEBWA.  
5

2.

6 All references to the "Code" are to the California  
7 Business and Professions Code and all references to "Regulations"  
8 are to Title 10, Chapter 6, California Code of Regulations.  
9

10 LICENSE HISTORY

3.

11  
12 A. At all times mentioned, NEW GENERATION REALTY INC,  
13 ("NEW GENERATION") was licensed or had license rights issued by  
14 the Department of Real Estate ("Department") as a real estate  
15 broker. On May 10, 2001, NEW GENERATION was originally licensed  
16 as a real estate broker.

17 B. At all times mentioned, KANYUBURE TINDIMWEBWA  
18 ("TINDIMWEBWA") was licensed or had license rights issued by the  
19 Department as a real estate broker. On November 3, 1986,  
20 TINDIMWEBWA was originally licensed as a real estate salesperson.  
21 On May 2, 2002, TINDIMWEBWA was originally licensed as a real  
22 estate broker. From May 10, 2005 to January 29, 2007,  
23 TINDIMWEBWA was the designated officer of NEW GENERATION.

24 C. At all times mentioned herein, NEW GENERATION was  
25 licensed by the Department as a corporate real estate broker by  
26 and through TINDIMWEBWA, as the designated officer and broker  
27

1 responsible, pursuant to Code Section 10159.2 of the Business and  
2 Professions Code for supervising the activities requiring a real  
3 estate license conducted on behalf NEW GENERATION of by NEW  
4 GENERATION's officers, agents and employees, including  
5 TINDIMWEBWA.

6 BROKERAGE AND LICENSED ACTIVITIES

7 4.

8 At all times mentioned, in the City of Downey, County  
9 of Los Angeles, NEW GENERATION acted as a real estate broker and  
10 conducted licensed activities within the meaning of:

11 A. Code Section 10131(d). NEW GENERATION operated a  
12 mortgage and loan brokerage dba Home & Estate Real Estate  
13 Mortgage; and

14 B. In addition, NEW GENERATION conducted broker-  
15 controlled escrows through its escrow division, Home & Estates  
16 Real Estate Escrow Division, under the exemption set forth in  
17 California Financial Code Section 17006(a)(4) for real estate  
18 brokers performing escrows incidental to a real estate  
19 transaction where the broker is a party and where the broker is  
20 performing acts for which a real estate license is required.  
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AUDIT EXAMINATION

5.

On July 31, 2007, the Department completed an audit examination of the books and records of NEW GENERATION pertaining to the mortgage and loan and broker-escrow activities described in Paragraph 4 that require a real estate license. The audit examination covered a period of time beginning on January 1, 2005 to December 31, 2006. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 060211 and LA 060237 and the exhibits and work papers attached to said audit report.

TRUST ACCOUNTS

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, NEW GENERATION accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by NEW GENERATION and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by NEW GENERATION in the bank accounts as follows:

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1 "New Generation Realty Inc. dba Homes and Estate Real Estate -  
Escrow Division  
2 Account No. 83220681"  
East West Bank  
3 Los Angeles, CA 90067 (T/A #1)

4  
5 "New Generation Realty Inc. dba Homes and Estate Real Estate -  
Escrow Division  
6 Account No. 82335068"  
East West Bank  
7 Los Angeles, CA 90067 (T/A #2)

8  
9 VIOLATIONS OF THE REAL ESTATE LAW

10 7.

11 In the course of activities described in Paragraphs 4  
12 and 6, above, and during the examination period described in  
13 Paragraph 5, Respondents NEW GENERATION and TINDIMWEBWA, acted in  
14 violation of the Code and the Regulations in that they:

15 (a) Permitted, allowed or caused the disbursement of  
16 trust funds from the trust accounts where the disbursement of  
17 funds reduced the total of aggregate funds in the combined escrow  
18 trust accounts, to an amount which, on December 31, 2006, was  
19 \$8,163.32, less than the existing aggregate trust fund liability  
20 of NEW GENERATION to every principal who was an owner of said  
21 funds, without first obtaining the prior written consent of the  
22 owners of said funds, as required by Code Section 10145 and  
23 Regulations 2832.1, 2950(d), 2950(g) and 2951.  
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1 (b) the escrow trust accounts were not in the name of  
2 the broker as trustee at a bank or other financial institution,  
3 nor designated as a trust accounts, in violation of Code Section  
4 10145 of the Code and Regulations 2832(a), 2950(d) and 2951.

5 (c) Failed to maintain an adequate control record in  
6 the form of a columnar record in chronological order of all trust  
7 funds received, deposited and disbursed by the escrow trust  
8 accounts, in violation of Code Section 10145 and Regulations  
9 2831.2950(d), 2950(g) and 2951.

10 (d) Failed to perform a monthly reconciliation of the  
11 balance of all separate beneficiary or transaction records  
12 maintained pursuant to Regulation 2831.1 with the record of all  
13 trust funds received and disbursed by the escrow trust accounts,  
14 as required by Code Section 10145 and Regulations 2831.2, 2950(d)  
15 and 2951.

16 (e) Failed to maintain a separate record for each  
17 beneficiary or transaction, thereby failing to account for all  
18 trust funds received, deposited and disbursed for the escrow  
19 trust accounts, in violation of Code Section 10145 and Regulation  
20 2831.1, 2950(d) and 2951.

21 (f) Failed to retain a true and correct copy of a  
22 Department of Real Estate approved Mortgage Loan Disclosure  
23 Statement signed by the broker for borrowers Linares, Jimenez,  
24 Vasilopoulos, Hernandez, De Santiagor, Ortiz, Serpas and Lobata,  
25 as required by Code Section 10240 and Regulation 2840.  
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1 (g) TINDIMWEBWA failed to supervise NEW GENERATION and  
2 had no system in place for regularly monitoring its compliance  
3 with the Real Estate Law especially in regard to establishing  
4 policies to review trust fund handling and escrow activities, in  
5 violation of Code Sections 10159.2, 10177(h) and Regulation 2725.

6 DISCIPLINARY STATUES AND REGULATIONS

7 8.

8 The conduct of Respondents NEW GENERATION and  
9 TINDIMWEBWA described in Paragraph 7, above, violated the Code  
10 and the Regulations as set forth below:

11 <u>PARAGRAPH</u>	12 <u>PROVISIONS VIOLATED</u>
13 7(a)	14 Code Section 10145 and Regulations 15 2832.1, 2950(d), 2950(g) and 2951
16 7(b)	17 Code Section 10145 and Regulations 18 2832(a), 2950(g) and 2951
19 7(c)	20 Code Section 10145 and Regulation 21 2831, 2950(d) and 2951
22 7(d)	23 Code Section 10145 and Regulation 24 2831.2, 2950(d) and 2951
25 7(e)	26 Code Section 10145 and Regulation 27 2831.1, 2950(g) and 2951

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Code Section 10240 and Regulation  
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7(g)

Code Sections 10159.2 and 10177(h)  
and Regulation 2725

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of NEW GENERATION and TINDIMWEBWA, under the provisions of Code Sections 10177(d) and/or 10177(g) and 10177(h)).


9.

The overall conduct of Respondents NEW GENERATION and TINDIMWEBWA constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondents NEW GENERATION and TINDIMWEBWA pursuant to Code Section 10177(g).

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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 the license and license rights of Respondents NEW  
5 GENERATION REALTY INC. and ISSY KANYUBURE TINDIMWEBWA, under the  
6 Real Estate Law (Part 1 of Division 4 of the Business and  
7 Professions Code) and for such other and further relief as may be  
8 proper under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this 6 day of December 2007   
11 Deputy Real Estate Commissioner

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23 cc: New Generation Realty Inc.  
24 c/o Francisco Guillermo Hernandez D.O.  
25 Issy Kanyubure Tindimwebwa former D.O.  
26 Robin Trujillo  
27 Sacto  
Audits - Darryl Thomas