

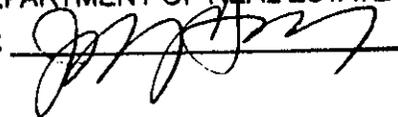
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FILED

NOV 29 2010

DEPARTMENT OF REAL ESTATE

BY: 

7
8
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-36938 LA
13)
14 STONECREEK CAPITAL MORTGAGE) A C C U S A T I O N
15 CORPORATION; and TONY NELSON,)
16 individually, and as designated)
17 officer for Stonecreek Capital)
18 Mortgage Corporation,)
19)
20 Respondents.)
21)
22)
23)
24)
25)
26)
27)

18 The Complainant, Maria Suarez, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against STONECREEK CAPITAL MORTGAGE CORPORATION ("STONECREEK"),
21 and TONY NELSON ("NELSON"), individually, and as designated
22 officer for STONECREEK, is informed and alleges as follows:

23 1.

24 The Complainant, Maria Suarez, a Deputy Real Estate
25 Commissioner of the State of California, makes this Accusation
26 in her official capacity.
27

2.

1
2 Respondent STONECREEK is presently licensed and/or has
3 license rights under the Real Estate Law (Part 1 of Division 4
4 of the Business and Professions Code, hereinafter the "Code") as
5 a real estate corporation. The license of STONECREEK expired on
6 February 28, 2009. Pursuant to Code Section 10201 STONECREEK
7 retains renewal rights. Pursuant to Code Section 10103 the
8 Department retains jurisdiction. Respondent NELSON was its
9 designated broker-officer from January 17, 2002, through
10 February 28, 2009.

11
12 3.

13 Respondent NELSON is presently licensed and/or has
14 license rights under the Real Estate Law as a real estate
15 broker.

16
17 4.

18 At all times herein mentioned, Respondents, on behalf
19 of others and in expectation of compensation, engaged in the
20 business, acted in the capacity of, advertised or assumed to act
21 as a real estate broker in the State of California within the
22 meaning of Section 10131 subparts (a) and (d) of the Code,
23 including soliciting prospective sellers or purchasers of real
24 property, negotiating for the purchase, sale or exchange of real
25 property, soliciting borrowers and lenders and negotiating loans
26 on real property.

27 ///

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5.

1
2 At all times relevant herein, Respondent NELSON, as
3 the officer designated by Respondent STONECREEK pursuant to
4 Section 10211 of the Code, was responsible for the supervision
5 and control of the activities conducted on behalf of Respondent
6 STONECREEK by its officers and employees as necessary to secure
7 full compliance with the Real Estate Law as set forth in Section
8 10159.2 of the Code.

9
6.

10 All further references to respondents herein include
11 Respondents NELSON and STONECREEK, and also include officers,
12 directors, employees, agents and real estate licensees employed
13 by or associated with NELSON and STONECREEK, and who at all
14 times herein mentioned were engaged in the furtherance of the
15 business or operations of Respondents NELSON and STONECREEK and
16 who were acting within the course and scope of their authority
17 and employment.
18

19
7.

20 On or about December 6, 2007, Gilbert Machado
21 ("Machado") entered into a contract for the purchase of the
22 property at 1427 Glenelder Avenue, Hacienda Heights, California
23 91745 (the "First Property"). On or about December 21, 2007,
24 Machado also entered into a contract for the purchase of the
25 property at 7557 Kilgarry Avenue, Pico Rivera, California 90660
26 (the "Second Property"). As required by the terms of the
27 purchase contracts Machado made an earnest money deposit of

1 \$2,000 for the First Property and \$2,000 for the Second
2 Property.

3 8.

4 STONECREEK, through its licensed salesperson Victor
5 Garcia, represented Machado in connection with the purchase
6 contracts for the First and Second Property as well as Machado's
7 application for a mortgage loan on each property.

8 FIRST CAUSE OF ACCUSATION
9 (Record Retention Violation)

10 9.

11 In the course of the activities described in
12 Paragraphs 7 and 8, above, Respondents NELSON and STONECREEK,
13 acted in violation of the Code in that they failed to retain all
14 records of their activities requiring a real estate broker
15 license for a period of three years including sales and loan
16 transaction files for their real estate clients and further
17 including listings, real estate contracts, canceled checks,
18 escrow and trust records, and specifically including the sale
19 and/or loan documentation pertaining to the First and Second
20 Property, as required by Code Section 10148.

21 10.

22 The conduct, acts and/or omissions of Respondents
23 NELSON and STONECREEK, as set forth above, are in violation of
24 Code Section 10148, and are cause for the suspension or
25 revocation of the licenses and license rights of Respondents
26

27

1 NELSON and STONECREEK pursuant to Code Sections 10176(a),
2 10176(i), 10177(d) and/or 10177(g).

3 SECOND CAUSE OF ACCUSATION
4 (Mishandling of Funds)

5 11.

6 Complainant hereby incorporates by reference the
7 allegations set forth in Paragraphs 1 through 10, above.

8 12.

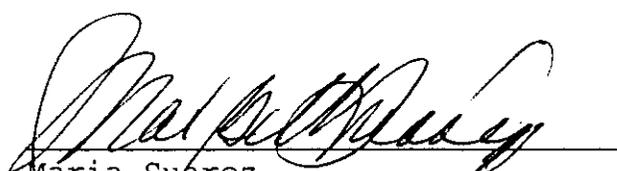
9 In connection with the real estate activities alleged
10 in Paragraphs 7 and 8, above, Respondents NELSON and STONECREEK
11 failed to place trust funds accepted on behalf of another,
12 including the \$4,000 earnest money deposit by Machado referred
13 to in Paragraph 7, above, into the hands of the owner of the
14 funds, a neutral escrow depository or into a trust account in
15 the name of the broker at a bank or other financial institution
16 not later than three business days following receipt of the
17 funds by the broker or by the broker's salesperson, as is
18 required by Code Section 10145 and Section 2832, Title 10,
19 Chapter 6, Code of Regulations ("Regulations").

20 13.

21 The conduct, acts and/or omissions of Respondents
22 NELSON and STONECREEK, as set forth above, are in violation of
23 Code Section 10145 and Section 2832 of the Regulations, and are
24 cause for the suspension or revocation of the licenses and
25 license rights of Respondents NELSON and STONECREEK pursuant to
26 Code Sections 10176(a), 10176(i), 10177(d) and/or 10177(g).
27

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 Respondent
5 STONECREEK CAPITAL MORTGAGE INC. and TONY NELSON, individually,
6 and as designated broker for Respondent STONECREEK CAPITAL
7 MORTGAGE INC. under the Real Estate Law, and for such other and
8 further relief as may be proper under other applicable
9 provisions of law.

10 Dated at Los Angeles, California
11 this 18th day of November, 2010.

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16 Maria Suarez
17 Deputy Real Estate Commissioner
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24

25 cc: TONY NELSON
26 STONECREEK CAPITAL MORTGAGE INC.
27 Maria Suarez
Sacto.