

1 Elliott Mac Lennan, Counsel (SBN 66674)
2 Bureau of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6982
6 Direct: (213) 576-6911
7 Facsimile: (213) 576-6917

FILED

SEP - 3 2014

BUREAU OF REAL ESTATE

By 

8
9 BEFORE THE BUREAU¹ OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * * * *

12 In the Matter of the Accusation of)
13 CAFFERY FINANCIAL INC.; and) No. H- 39588 LA
14 JOSEPH GEORGE CAFFERY,) ACCUSATION
15 individually and as designated officer of)
16 Caffery Financial Inc.,)
17 Respondents.)

18 The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of
19 the State of California, Bureau of Real Estate ("Bureau") for cause of Accusation against
20 CAFFERY FINANCIAL INC. and JOSEPH GEORGE CAFFERY individually and as
21 designated officer of Caffery Financial Inc. (collectively "Respondents,") is informed and
22 alleges as follows:
23
24
25

26 ¹ Effective July 1, 2013, the California Department of Real Estate became the Department of Consumer Affairs, Bureau of Real Estate ("Bureau"). References in this Accusation are to the successor entity.

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

1.

The Complainant, Veronica Kilpatrick, a Deputy Real Estate Commissioner of the State of California, makes this Accusation in her official capacity.

2.

All references to the "Code" are to Part I of Division 4 of the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

Individuals and Entities

3.a

From May 7, 2008, through the present, Respondent CAFFERY FINANCIAL INC. ("CFI") has been licensed as a corporate real estate broker. At all times relevant herein, CFI was acting by and through Respondent JOSEPH GEORGE CAFFERY as its designated officer pursuant to Business and Professions Code ("Code") Section 10159.2 to be responsible for ensuring compliance with the Real Estate Law.

3.b

Respondent JOSEPH GEORGE CAFFERY ("CAFFERY") was originally licensed as a real estate salesperson on February 8, 1985, and a real estate broker on April 16, 1990, and has been the designated officer of CFI since its inception.

Table: CFI Management Structure and Ownership

Name	Licensee	Ownership/Title
Joseph George Caffery	Broker	Designated Officer; 50% owner
Kim Marie Caffery	Unlicensed	50% owner

4.

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents" such allegation shall be deemed to mean that the officers, directors,

1 employees, agents and real estate licensees employed by or associated with Respondents
2 committed such act or omission while engaged in the furtherance of the business or operations
3 of Respondents and while acting within the course and scope of their corporate authority and
4 employment, including CAFFERY and Kim Marie Caffery.
5

6 FIRST CAUSE OF ACCUSATION
7 (Mortgage Loan Brokerage Audit)

8 5.

9 Code Section 10131(d). Respondents engaged in a mortgage loan brokerage
10 activity including conducting activities with the public wherein institutional and private lenders
11 and borrowers were solicited for loans secured directly or collaterally by liens on real property,
12 and wherein such loans were arranged, negotiated, processed, consummated, packaged and
13 serviced on behalf of others for compensation or in expectation of compensation and for fees
14 often collected in advance.
15

16 Audit Examination

17 6.

18 On March 6, 2014, the Bureau completed an audit examination of the books and
19 records of Respondent CFI pertaining to the mortgage loan activities described in Paragraph 5,
20 which require a real estate license. The audit examination covered a period of time beginning
21 on January 1, 2011 and ending on December 31, 2013. The audit examination revealed
22 violations of the Code and Regulations as alleged in the following paragraphs and more fully set
23 forth in the Bureau's Audit Report SD 130017 and the exhibits and work papers attached
24 thereto.
25
26

1
2 Trust Account

3
4 7.

5 At all times mentioned, in connection with the activities described in Paragraph
6 6, above, CFI accepted or received funds including funds in trust ("trust funds") from or on
7 behalf of borrowers and lenders handled by CFI and thereafter made deposits and disbursements
8 of such funds. From time to time herein mentioned, during the audit period and thereafter, said
9 trust funds were deposited and/or maintained by CFI in the bank accounts described below:

10 Bank Account (B/A 1)

11 Bank: Pacific Western Bank
12 601 E. Tahquitz Canyon Way
13 Palm Springs, CA 92262

14 Account Name: Caffery Financial Trust, Joe G. Caffery, Agent, Trustee

15 Account Number: xxxx-xxxx-0941

16 Signatory: Joe G. Caffery
17 Signatory: Kim Marie Caffery

18 (Mortgage Loan Brokerage handling of receipts and disbursements of trust funds)

19 Bank Account (B/A 2)

20 Bank: JP Morgan Chase Bank
21 36101 Bob Hope Dr. Suite G-1
22 Rancho Mirage, CA 92270

23 Account Name: Caffery Financial Inc. Agent, Trustee

24 Account Number: xxxx-xxxx-5160

25 Signatory: Joseph G. Caffery (REB/D.O.)

26 (General Business account)

1
2 Violations of the Real Estate Law

3 8.

4 In the course of activities described in Paragraphs 5 and 7 above, and during the
5 audit examination period, described in Paragraph 6, Respondents CFI and CAFFERY acted in
6 violation of the Code and the Regulations in which Respondents:

7 (a) Permitted, allowed or caused the disbursement of trust funds from B/A 1 bank
8 account where the disbursement of funds reduced the total of aggregate funds in B/A 1, to an
9 amount which, on September 30, 2013, was \$180.93 less than the existing aggregate trust fund
10 liability to every principal who was an owner of said funds, without first obtaining the prior
11 written consent of the owner of said funds, in violation of Code Sections 10145 and 10177(g) and
12 Regulation 2832.1;
13

14 (b) Failed to maintain an adequate, accurate and complete control record in the
15 form of a columnar record in chronological order of all trust funds received, deposited and
16 disbursed in B/A 1, in violation of Code Section 10145 and Regulation 2831;
17

18 (c) Failed to maintain an adequate, accurate and complete separate record for
19 each beneficiary or transaction, thereby failing to account for all trust funds received, deposited
20 and disbursed for B/A 1, in violation of Code Section 10145 and Regulation 2831.1;

21 (d) Failed to perform an accurate and complete monthly reconciliation of the
22 balance of all separate beneficiary or transaction records maintained pursuant to Regulation
23 2831.1 with the record of all trust funds received and disbursed by B/A 1, in violation of Code
24 Section 10145 and Regulation 2831.2;

25 (e) Failed to place trust funds, accepted on behalf of another, into the hands of the
26 owner of the funds, a neutral escrow depository or into a trust fund account in the name of the

1 trustee at a bank or other financial institution, in violation of Code Section 10145 and
2 Regulation 2832(a). B/A 1 was used for trust fund handling but not designated as a trust
3 account;

4 (f) Permitted Kim Marie Caffery, CAFFERY's wife and employee, an unlicensed
5 and unbonded person, to be an authorized signatory on B/A 1 into which trust funds were
6 deposited, in violation of Code Section 10145 and Regulation 2834;

7 (g) Mixed and commingled trust funds and personal funds by depositing trust
8 funds into CFI's general business account, B/A 2, and also by depositing monies CFI and
9 CAFFERY borrowed into B/A 1, in violation of Code Section 10176(e) and Regulation 2832.
10 CFI deposited \$50,000 trust funds received from Patricia L. to fund a loan for the property
11 located at 1330 E. Palm Canyon Drive, Palm Springs;

12 (h) Received undisclosed compensation in the form of an earning credit agreement
13 with Pacific Western Bank whereby CFI through B/A 1 received defrayal through the
14 instrumentality of bank charges offsets on the basis of the amount of deposits of trust funds,
15 which were not disclosed to the owners of said funds, in violation of Code Section 10176(g);

16 (i) Met the criteria as a threshold broker, as described in Code Section
17 10232(a)(1)(A). CFI negotiated more than ten (10) loans within twelve months in aggregate
18 amount of more than one million dollars. CFI negotiated twelve (12) loans in aggregate amount
19 of \$1,216,000, between January 2011 and December 2011, in violation of Code Section
20 10232(e);

21 (j) Failed to submit a notice to the Bureau within thirty (30) days of CFI's first
22 multi-lender loan secured directly by an interest in the same real property on February 4, 2011
23 for the Harlin B. loan. CFI made or arranged its first multi-lender loan transaction hereof yet
24 failed to notify the Bureau thereof, in violation of Code Section 10238(a);
25
26

1 (k) Failed to provide the Bureau with the Annual Report of a Review of Trust
2 Fund Financial Status (Independent Audit Report), in violation of Code Section 10232.25 and
3 Regulation 2846.8. Quarterly Trust Fund Status Reports were not submitted to the Bureau
4 within 90 days after the end of CFI's fiscal year, to wit, December 31, 2011;

5 (l) CFI failed to file the Mortgage Loan/Trust Deed Annual Report (Business
6 Activity Report) for the year ended 2011 within 30 days after the end of CFI's fiscal year end, to
7 wit, December 31, 2011, in violation of Code Section 10232.2(c) and Regulation 2849.01
8 (Annual Report Format);

9 (m) Failed to provide the Bureau with Quarterly Trust Fund Status Reports, in
10 violation of Code Section 10232.25 and Regulation 2846.8. Quarterly Trust Fund Status
11 Reports were not submitted to the Bureau for quarters:

- 12 • June 30, 2011
- 13 • September 30, 2009
- 14 • March 31, 2011

15
16 (f) Failed to provide the Bureau with Quarterly Trust Fund Status Reports, in
17 violation of Code Section 10232.25 and Regulation 2846.8. Quarterly Trust Fund Status
18 Reports were not submitted to the Bureau for quarters:

- 19 • March 31, 2010
- 20 • June 30, 2010
- 21 • September 30, 2010

22
23 (n) Failed to provide or deliver a statement in writing, a Lender/Purchaser
24 Disclosure Statement, containing all the information required by Code Section 10232.5 to
25 prospective lenders J&K Garcia, Patricia L., Gary T., before said lenders became obligated to
26 make the loan and before the receipt by or on behalf of the broker of any funds from said lenders

1 for these multi-lender loans, in violation of Code Sections 10232.4, 10232.5 and 10238(l) and
2 Regulation 2846;

3 (o) Failed to provide a complete loan application to borrowers with respect to
4 the loans by lenders J&K Garcia, Patricia L., Gary T., in violation of Code Section 10240 and
5 Regulation 2842.5. The original written loan applications provided to said borrowers were
6 neither signed nor dated;

7 (p) Failed to deliver a written copy of CFI's appraisal of each parcel of real
8 property securing the notes or interest to each of the lenders/investors, including but not limited
9 to J&K Garcia, Patricia L., Gary T., in violation of Code Sections 10232.6 and 10238(h)(3);

10 (q) Failed to retain a statement (Percentage of Investment Statement) whereby
11 the prospective lenders/investors indicated whether or not the investment/loan in the multi-
12 lender loans exceeded ten (10%) of the lenders/investors net worth or 10% of the
13 lenders/investors adjusted gross income² with respect to lenders CFI/Rose/Harrison/Noia,
14 Therese C./Judy R., Pat L./Michael H., T.,J. K. Caffery/Garcia/Lamp and
15 Caffery/Harrison/Rose/Tassel, in violation Code Section 10238(f);

16 (r) CFI negotiated constructions and rehabilitation loans during the audit period
17 using independent public escrow companies. Based on Settlement Statements provided, escrow
18 (generally Liberty Escrow Inc.) did not disburse funds according to the percentage of
19 completion of the draw schedule to PHI (builder/developer). Instead, escrow disbursed total
20 loan proceeds to CFI at the close of escrow. CFI received loan proceeds from escrow and
21 deposited into B/A 1. Then CFI would disburse funds to PHI for construction of the properties.
22 CFI failed to meet the safeguards pursuant to the requirement of Code Section 10238(h) for
23 lenders CFI/Rose/Harrison/Noia, Therese C./Judy R., Pat L./Michael H., T.,J. K.

24
25
26 ² Internal Revenue Code section 62.

1 Caffery/Garcia/Lamp and Caffery/Harrison/Rose/Tassel, as required by the following
2 safeguards, and in violation of Code Section 10238(h)(4)(D),(E),(F) thereof:

3
4 1) The disbursement draws from the escrow were not based on verification from
5 an independent qualified person, who certifies that the work was completed;

6
7 2) No appraisal was completed by a qualified and licensed appraiser; and

8
9 (3) No detailed description of actions that may be taken in the event of a failure to
10 complete the project.

11 (s) CAFFERY failed, as the officer designated by a corporate broker licensee, to
12 be responsible for the supervision and control over the activities conducted on behalf of CFI
13 corporation by its officers and employees as necessary, to secure full compliance with the Real
14 Estate Law including the supervision of the salespersons licensed to the corporation and/or
15 employee(s), as required by and in violation of Code Section 10159.2 and 10177(h) and
16 Regulation 2725.

17 9.

18 The conduct of Respondents CFI, CAFFERY, as the case may be, described in
19 Paragraph 8, above, violated the Code and the Regulations as set forth below:

20 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
21 8(a)	Code Sections 10145 and 10177(g) and Regulation 2832.1 (conversion)
22 8(b)	Code Section 10145 and Regulation 2831
23 8(c)	Code Section 10145 and Regulation 2831.1
24 8(d)	Code Section 10145 and Regulation 2831.2
25 8(e)	Code Section 10145 and Regulation 2832(a)
26	

- 1 8(f) Code Section 10145 and Regulation 2834
2 8(g) Code Sections 10145 and 10176(e)
3 8(h) Code Section 10176(g)
4 8(i) Code Section 10232(e)
5 8(j) Code Section 10232(a)
6 8(k) Code Section 10232.2(a) and Regulation 2846.5
7 8(l) Code Section 10232.2(c) and Regulation 2849.01
8 8(m) Code Section 10232.25 and Regulation 2846.8
9 8(n) Code Sections 10232.4, 10232.5 and 10238(l) and Regulation 2846
10 8(o) Regulation 2842.5
11 8(p) Code Sections 10232.6 and 10238(h)(3)
12 8(q) Code Section 10238(f)
13 8(r) Code Section 10238(h)(4)(D)((E), (F)
14 8(s) Code Sections 10159.2 and 10177(h) and Regulation 2725
15
16

17 The foregoing violations constitute cause for the suspension or revocation of the real estate
18 licenses and license rights of Respondents CFI and CAFFERY under the provisions of Code
19 Section 10145, 10176(e) ,10176(g), 10177(d), and 10177(g).

20 SECOND CAUSE OF ACCUSATION

21 (Negligence)

22 10.

23 The overall conduct of Respondents CFI and CAFFERY constitutes negligence
24 and is cause for the suspension or revocation of the real estate license and license rights of said
25 Respondents pursuant to the provisions of Code Section 10177(g).

26 ///

THIRD CAUSE OF ACCUSATION
(Breach of Fiduciary Duty)

11.

The conduct, acts and omissions of Respondents CFI and CAFFERY constitute a breach of fiduciary duty owed to Respondents' clientele and trust fund beneficiaries of good faith, trust, confidence and candor, within the scope of their brokerage relationship, in violation of Code Section 10177(g) and constitutes cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to the provisions of said Code Sections. In particular, Respondents by not designating B/A 1 as a trust account unnecessarily exposed the trust funds contained therein and exposed each and every borrower-beneficiary of said trust funds to suit, attachment, levy and seizure by:

- (1) the general creditors of each trust fund beneficiary;
- (2) the federal and state taxing authorities, including but not limited to the Internal Revenue Service, the California Franchise Tax Board, and the California State Board of Equalization;
- (3) the United States Bankruptcy Court; and
- (4) a lack of recourse and recompense to said beneficiaries for having an unlicensed and unbonded person as a signatory on B/A 1.

///

///

///

///

1 FOURTH CAUSE OF ACCUSATION
2 (Supervision)

3 12.

4 The overall conduct of Respondent CAFFERY constitutes a failure on his part to
5 exercise reasonable supervision and control over the licensed activities of his brokerage, in
6 violation of Code Section 10177(h) and Regulation 2725. Respondent CAFFERY failed to keep
7 CFI in compliance with the Real Estate Law, and is cause for the suspension or revocation of the
8 real estate license and license rights of Respondent CAFFERY, pursuant to the provisions of
9 Code Sections 10177(d), 10177(g) and/or 10177(h).
10

11 13.

12 (Investigation and Enforcement Costs)

13 Code Section 10106 provides, in part, that in any order issued in resolution of a
14 disciplinary proceeding before the Bureau of Real Estate, the Commissioner may request the
15 administrative law judge to direct a licensee found to have committed a violation of this part to
16 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
17

18 14.

19 (Audit Costs)

20 Code Section 10148(b) provides, in pertinent part the Commissioner shall charge
21 a real estate broker for the cost of any audit, if the Commissioner has found in a final decision
22 following a disciplinary hearing that the broker has violated Code section 10145 or a regulation
23 or rule of the Commissioner interpreting said section.
24

25 ///

26 ///

1 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
2 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
3 action against all licenses and/or license rights of Respondents CAFFERY FINANCIAL INC.
4 and JOSEPH GEORGE CAFFERY, individually and as designated officer of Caffery Financial
5 Inc. under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions
6 Code) and for such other and further relief as may be proper under other applicable provisions
7 of law, including but not limited to the repatriation of trust fund shortage, restitution, costs of
8 investigation, enforcement and audit.
9

10 Dated at Los Angeles, California
11 this 28 day of August, 2014.
12

13 
14 VERONICA KILPATRICK
15 Deputy Real Estate Commissioner
16
17
18
19
20
21
22

23 cc: Caffery Financial Inc.
24 Joseph George Caffery
25 Veronica Kilpatrick
26 Zaky Wanis - Audits
Sacto