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BEFORE THE DEPARTMENT OF CORPORATIONS

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, Complainant, vs. NETWORK CAPITAL FUNDING CORPORATION and TRI MINH NGUYEN, Respondents.	File No.: 603-D787 & 603-J384 ACCUSATION

The Complainant is informed and believes, and based upon such information and belief, alleges and charges Respondent as follows:

I

Respondent Network Capital Funding Corporation ("Network Capital") is a finance lender and broker licensed by the Commissioner of Corporations of the State of California ("Commissioner") pursuant to the California Finance Lending Law (California Financial Code § 22000 et seq.) ("CFLL). Network Capital has its principal place of business located at 5 Park Plaza, Suite 800, Irvine, California 92614. Network Capital also has a branch license, which is also

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currently held at 5 Park Plaza, Suite 800, Irvine, California 92614. Network Capital's initial CFLL license was issued on October 30, 2006 and its branch office license was issued on February 6, 2012.

Respondent Tri Minh Nguyen ("Nguyen"), according to the documents submitted to the Department of Corporations ("Department") is, and was at all times relevant herein, the president and sole shareholder of Network Capital. Nguyen is also a mortgage loan originator licensed in the State of California. The National Mortgage Licensing System and Registry ("NMLS") records indicate that Nguyen has been licensed as a mortgage loan originator ("MLO") in California since on or about June 15, 2010.

Christopher Minh Tran ("Tran"), who no longer works at Network Capital, was at all times relevant herein, a licensed MLO in the State of California and sponsored by Network Capital. NMLS records indicate that Tran has been licensed as a MLO in California since on or about June 1, 2010.

Sam Rumi ("Rumi"), who no longer works at Network Capital, was at all times relevant herein, a licensed MLO in the State of California and sponsored by Network Capital. NMLS records indicate that Rumi has been licensed as a MLO in California since on or about May 27, 2010.

Hector Estrada ("Estrada"), who no longer works at Network Capital, was at all times relevant herein, a licensed MLO in the State of California and sponsored by Network Capital. NMLS records indicate that Estrada has been licensed as a MLO in California since on or about June 16, 2010.

II

In 2008, Congress enacted the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (the "SAFE Act"), which required all states to enact laws requiring the licensing of all mortgage loan originators. The mortgage loan originator licensing provisions under the CFLL became effective October 11, 2009 and required all mortgage loan originators to be licensed on or before July 31, 2010 in order to continue to engage in mortgage loan origination activities in the State of California. The new mortgage loan originator provisions of the CFLL also provided that no CFLL licensee could make or broker a residential mortgage loan that was not negotiated by or applied for through a licensed mortgage loan originator. See Financial Code section 22100(d).

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III

On or about May 5, 2011, the Commissioner, by and through his staff, began a special examination of the books and records of Network Capital. The examination disclosed that Network, by and through Nguyen, repeatedly violated Financial Code section 22100, subsections (b) and (d) by employing unlicensed MLO's and making residential mortgage loans which were not offered by, negotiated by, and/or applied for through a licensed MLO. The examination further disclosed that Network Capital and Nguyen had violated Financial Code section 22170, subsections (a) and (b) by misrepresenting (i) in the books and records of Network Capital that Nguyen, Tran, Rumi, and/or Estrada were the MLO's who worked on California residential mortgage loans when unlicensed MLO's were the individuals who worked as the MLO on those California residential mortgage loans[1] and (ii) to Department of Corporations ("Department") staff that "credit managers" do not engage in mortgage loan origination activities.

Network Capital employs what it titles "credit managers" and "loan originators". The loan documents reviewed by Department staff disclosed that there is always a credit manager and loan originator on every loan file even when the credit manager is a licensed MLO. The loan originator in every file reviewed per the application and Network Capital's then computer system was a California licensed MLO.

According to Network Capital and Nguyen, credit managers who are not licensed MLO's do not engage in mortgage loan origination activities and never communicate with a loan applicant to discuss the loan, but only manage the loan from the gathering of financial information to its input, generate and send the initial and final disclosures, and oversee the loan through its processing and funding. Network Capital and Nguyen could provide no supporting documentation for this assertion and the special examination disclosed otherwise as discussed immediately below.

A review of Network Capital's employment contracts reveals employment contracts for both "credit managers" and "loan officers". From a review of numerous employment contracts, it appears that Network Capital enters into "credit manager" contracts with unlicensed persons and "loan

[1] Residential mortgage loan(s) is hereafter referred to as loan(s).

officer" contracts with licensed MLO's. The credit manager employment contracts and loan officer employment contracts are virtually identical.

During the course of the special examination, Network Capital and Nguyen were requested to provide a list of loans, which list was to include information regarding the credit manager and loan originator. The list provided by Network Capital and Nguyen in response thereto, disclosed that Network Capital originated 191 California loans from August 3, 2010 through April 29, 2011. Pursuant to this list, Nguyen was the loan originator in 97 or 50.79% of the loans; Tran was the loan originator in 23 or 12.04 % of the loans; Estrada was the loan originator in 23 or 12.04% of the loans; and Rumi was the loan originator in 13 or 6.8% of the loans. However, Department communications with borrowers consistently disclosed that the "credit manager" was the "loan originator".

The list of loans provided by Network Capital and Nguyen further revealed that (i) 81.4% (79) of the loans alleged to be originated by Nguyen disclosed a credit manager who was not licensed as a MLO in California, (ii) 69.5% (16) of the loans alleged to be originated by Tran disclosed a credit manager who was not licensed as a MLO in California, (iii) 34.7% (8) of the loans alleged to be originated by Estrada disclosed a credit manager who was not licensed as a MLO in California, and (iv) 53.8% (7) of the loans alleged to be originated by Rumi disclosed a credit manager who was not licensed as a MLO in California.

The special examination further revealed that Network Capital and Nguyen were not retaining records that would have enabled the Department to determine if Network Capital was complying with the CFLL, i.e., email communications with borrowers, in violation of Financial Code section 22156.

IV

Commencing in at least August 2012 and continuing through November 2012, Respondents engaged in an advertising campaign through mail solicitation, which included an individually tailored webpage to which consumers were directed, that violated Financial Code sections 22161, 22164, and 22346 as follows:

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1. Respondents failed to disclose in close proximity to the reference of the name of the consumer's lender that Network Capital was not sponsored by or affiliated with and the solicitation was not authorized by the consumer's lender as required by Business and Professions Code section 14701.

2. Respondents failed to disclose in close proximity to the reference to the amount of the existing loan that Network Capital was not sponsored by or affiliated with the consumer's lender, the solicitation was not authorized by the consumer's lender, and the consumer's information was not provided by the consumer's lender as required by Business and Professions Code section 14702.

3. Respondents failed to fully and clearly describe the terms of the loan programs offered as required by Financial Code section 22164.

4. Respondents failed to disclose the rates that would apply over the course of the loan, which rates were to be determined by adding an index and margin, and the time period during which each such rate would apply, in advertising an adjustable rate mortgage as required by 12 Code of Federal Regulations, section 1026.24(f)(2)(i) (hereinafter Reg. Z, Rule 1026.24).

5. Respondents failed to clearly and conspicuously disclose the rates discussed in 4 above in close proximity and in equal prominence to the advertised rate as required by Reg. Z, Rule 1026.24(f)(2)(ii).

6. Respondents failed to disclose the amount of each payment that will apply over the course of the loan, which payment is to be determined by adding an index and margin, and the time period during which each such payment would apply, in advertising an adjustable rate mortgage as required by Reg. Rule 1026.24(f)(3)(i).

7. Respondents failed to clearly and conspicuously disclose the payments discussed in 6 above in close proximity and in equal prominence to the advertised payment as required by Reg. Z, Rule 1026.24(f)(3)(ii).

8. Respondents failed to clearly and conspicuously state when advertising fixed rate loans that the interest on the portion of credit extended beyond the fair market value is not tax deductible for federal income tax purposes and that the consumer should consult a tax adviser for

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further information regarding the deductibility of interest and charges as required by Reg. Z, Rule 1026.24(h).

9. Respondents, in certain solicitations, disclosed closing costs charges in the fine print when the solicitation stated "no closing costs" in violation of Financial Code section 22161.

10. The mailer and the individually tailored webpage taken together suggested the solicitation was from a government agency or government sponsored or affiliated agency and Respondents failed to make the disclosures required under Business and Professions Code section 17533.6.

V

California Financial Code section 22714 provides in pertinent part:

> (a) The commissioner shall suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:
>
> (1) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.
>
> (2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division. . . .

California Financial Code section 22169 provides in pertinent part:

> (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, . . . suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any finance lender, broker, or any other person, if the commissioner finds either of the following:
>
> (1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the finance lender, or to the public.

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California Financial Code section 22172 provides in pertinent part:

> (a) The commissioner may do one or more of the following:
> (1) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.

VI

The Commissioner finds that, by reason of the foregoing, Respondents have violated Financial Code sections 22100, subsections (b) and (d), 22156, 22161, 22164, 22170, subsections (a) and (b), and 22346, and it is in the best interests of the public to (i) suspend the finance lender/broker licenses of Respondent Network Capital, (ii) suspend Respondent Nguyen from any position of employment, management or control of any finance lender and/or broker, and (iii) suspend the mortgage loan originator license of Respondent Nguyen.

WHEREFORE, IT IS PRAYED that the finance lender/broker licenses of Respondent Network Capital be suspended for a period of up to twelve months, Respondent Nguyen be suspended for a period of up to twelve months from any position of employment, management or control of any finance lender and/or broker, and Respondent Nguyen's mortgage loan originator license be suspended for a period of up to twelve months..

Dated: February 26, 2012
Los Angeles, California

JAN LYNN OWEN
Commissioner of Corporations

By_____
Judy L. Hartley
Senior Corporations Counsel

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