BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: KWANG TAE KIM dba TOWN BANCORP FUNDING, Respondent.	File No.: 963-1967 OAH No.: L2004040768
In the Matter of the Statement of Issues Against: TOWN BANCORP FUNDING CORPORATION, Respondent.	OAH No.: L2004040770
In the Matter of the Cease and Refrain Order Against: KWANG TAE KIM dba TOWN BANCORP FUNDING, Respondent.	OAH No.: L2004040772

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Commissioner of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective JUL 16 2004.

IT IS SO ORDERED JUL 16 2004.

COMMISSIONER OF CORPORATIONS

By _____

rfm

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In the Matter of the Accusation Against: KWANG TAE KIM dba TOWN BANCORP FUNDING, Respondent.	File No. 963-1967 OAH No. L2004040768 L2004040770 L2004040772 [Consolidated for Hearing and Decision]
In the Matter of the Statement of Issues Against: TOWN BANCORP FUNDING CORPORATION, Respondent.	
In the Matter of the Cease and Refrain Order Against: KWANG TAE KIM dba TOWN BANCORP FUNDING, Respondent.	

PROPOSED DECISION

On May 26, 2004 Administrative Law Judge Timothy S. Thomas, Office of Administrative Hearings, heard this matter in Los Angeles, California.

Judy L. Hartley, Senior Trial Counsel, represented complainant, the Commissioner of the Department of Corporations (hereinafter the department).

Kwang Tae Kim (hereinafter Kim, or respondent) appeared on behalf of all respondents. Mr. Kim was assisted by Korean interpreter Chung Joo Park.

The matter was submitted on May 26, 2004.

FACTUAL FINDINGS

1. Demetrios A. Boutris, California Corporations Commissioner, filed the Accusation in his official capacity.

2. The department issued finance lender's license number 603-6012 to respondent Kim on October 7, 1998. The license authorizes respondent to make consumer and commercial loans and charge fees and interest thereon. At the time of licensure respondent signed a statement acknowledging that he had read the California finance law and agreed to abide by it. Kim conducts business as Town Bancorp Funding (Town Funding) at 3600 Wilshire Boulevard, Los Angeles.

3. On May 1, 2003 respondent filed an application for a finance lender's license on behalf of Town Bancorp Funding Corporation (the corporation). Kim is the president and sole shareholder of the corporation.

4. On November 22, 2002 the department conducted a regulatory examination of the books and records of Town Funding. A review of a sampling of loan transaction files revealed a number of deficiencies and violations of the Finance Lenders Law.[1] Among the eight categories of statutory and regulatory violations found at the time of the November 2002 examination were three violations of Financial Code section 22305, prohibiting the charging of excessive administrative fees, and five violations of section 22307, prohibiting requiring borrowers to make their first loan payments in less than 15 days from the date of the loan. On June 30, 2003 the department's examiner notified respondent in writing of the findings, ordered him to perform an audit of all open loans and all loans paid off subsequent to April 2001 and to make refunds of all administrative overcharges that had been made on those loans. The examiner also ordered respondent to file a report with the department detailing the results of the audit and describing the corrective actions taken.

5. On August 4, 2003 respondent reported to the department that he had identified four loans concerning which he had charged administrative fees in excess of the amounts permitted by section 22305, and that he had refunded those fees. He also represented that he was no longer collecting the first installment of loan repayments less than 15 days from the making of the loans.

6. From December 10 through 12, 2003 the department's examiner conducted a follow-up examination of respondent's books and records and asked the office manager to provide proof of the refunds. The office manager was able to produce proof, in the form of a cancelled check, for only one of the transactions. Furthermore, the date of the check did not match the date listed for the refund in respondent's August 4, 2003 audit report. The examiner thereupon asked respondent's office manager to produce all loan files for loans

[1] Unless otherwise specified, all citations are to the California Finance Lenders Law, Financial Code section 22000 et. seq.

funded between June 2000 and November 2003, and selected 30 files representing loans under $5,000 for review. All 30 loan transactions listed "fees" in excess of legally permissible administrative fees for the small loans.[2] The examiner determined that in one loan of an amount under $2,500 respondent had charged $450, and in one loan over $2,500 respondent had charged an administrative fee of $1,200. When asked if all of the overcharges had been refunded, the office manager answered in the affirmative, but was unable to produce any documentation to substantiate his assertion. With respect to the timing of the borrowers' first payments, in all 30 loan transactions respondent had provided for first payments less than 15 days from the dates the loans were made.

7. At hearing, Kim's current office manager testified that Kim personally approved all loans and set the policy concerning fees charged, confirming the written explanation that respondent allegedly gave the department in August 2003.[3] She testified that the amounts labeled as "fees" in the loan transaction documents actually represented a 1% fee, that the remaining charge represented interest, and that the interest was calculated at the rate of 9% per month, or 108% per year. She claimed to be unaware that 108% annual interest may be grossly usurious and illegal.[4] Moreover, no documentation was found that supported a 9% monthly rate calculation. Rather, the rate charged 22 selected loan customers who borrowed $2,500 or less was actually over 206%, or between 166% and 186% if $50 of the "finance charge" is considered a conforming fee.

8. Both respondent and his office manager admitted that the company had failed to comply with the law and previous directives of the department with respect to requiring the first installment payment less than 15 days after the loans were made. Town Funding did not change its practices in this regard until January 2004. Respondent did not attempt to explain to its customers that the "fees" or "finance charge" referenced in its loan documents actually referred to a 1% fee until May 2004. At no time has respondent revealed or explained to its customers that the vast majority of the "fees" being charged actually represent interest, and at no time has the actual or claimed interest rate been explained to the borrowers.

9. Three additional violations were not charged but evidence concerning which was offered in aggravation. First, review of respondent's loan files revealed that security in real property was taken by Town Funding for loans less than $5,000 in violation of law.[5] Second,

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[2] Section 22305 provides that for loans of $2,500 or less a finance lender may charge an administrative fee of 5% or $50, whichever is less, and for loans in excess of $2,500 may charge no more than $75.

[3] Respondent offered Exhibit R-1, a letter dated August 27, 2003 addressed to the department. The letter, addressed to Charles Agbonkpolor of the department, contains no address, although it indicates it was sent "Via regular mail." Mr. Agbonkpolor testified that he did not receive the letter. There is serious doubt in the mind of the Administrative Law Judge that the letter was sent at all, as there is doubt that Exhibit R-2, a form letter to customers referenced in Finding 8, was sent.

[4] Sections 22303 and 22304 regulate the interest that may be charged by licensees on loans of less than $2,500. Depending on the principal amount, generally the permissible rate varies from 1% to 2.5% per month on the unpaid balance.

[5] Section 22330. Respondent's office manager contends that certain loans in excess of $5,000 were made to one borrower, secured by real property, and then "split" into two loans of less than $5,000 each. Purportedly, this was done at the convenience of the borrower who desired two separate installment payment arrangements. However, the

respondent's loan forms reference a penalty for dishonored checks of $20 to $40, either of which amount is in excess of the fee permitted by law.[6] Third, many of the examined loan agreements were entered into between borrowers and "Town Bancorp Funding Corp," when the corporation was not and is not licensed to engage in lending activities. Respondent answered this charge by testifying that the corporation was acting in the capacity as his partner in the transaction.

10. On April 24, 2004 the commissioner ordered respondent, pursuant to section 22712, to desist and refrain from charging excessive administrative fees, requiring borrowers to make first loan payments in less than 15 days from the date of the loans, and ordered him to make refunds of excessive administrative fees.

11. The violations of the Finance Lenders Law by respondent are so pervasive, the fees and/or rates charged by him so disproportionate to any reasonable concept of legality or legitimate business practice, his explanations for the practices so illogical and unsound, and his actions to heed repeated warnings by the department so tardy and insufficient, that merely restricting his license would not provide meaningful protection to the consuming public.

LEGAL CONCLUSIONS

1. Cause exists to discipline finance lender's license number 6036012 issued to respondent Kwang Tae Kim pursuant to Financial Code section 22714, in that he has failed to comply with demands, rulings or requirements of the commissioner, and has violated provisions of the Finance Lenders Law, based on Factual Findings 2 through 11.

2. Cause exists to deny the application of respondent Town Bancorp Funding Corporation for licensure as a finance lender pursuant to Financial Code section 22109, in that the owner of the applicant has violated provisions of the Finance Lenders Law, based on Factual Findings 2 through 11.

3. Cause exists to uphold the Desist and Refrain Order issued by the commissioner pursuant to Financial Code section 22712.

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loan documents examined did not support this theory, as no instances of two loans made to the same person on the same date were found.

[6] Section 22320 sets a maximum fee of $15 for NSF checks.

ORDER

1. Finance lender license number 6036012 issued to respondent Kwang Tae Kim is hereby revoked.

2. The application of respondent Town Bancorp Funding Corporation for licensure is hereby denied.

3. Respondent Kwang Tae Kim, dba Town Bancorp Funding, and his agents, employees and/or servants are ordered to immediately desist and refrain from (i) charging excessive administrative fees, (ii) requiring borrowers to make their first loan payment in less than 15 days form the date of the loan, and (iii) failing to comply with a demand of the commissioner to make refunds of excessive administrative fees.

DATED: June 15, 2004

TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings