

1 PRESTON DUFAUCHARD
California Corporations Commissioner
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8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

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11 In the Matter of the Accusation of THE
CALIFORNIA CORPORATIONS
12 COMMISSIONER,

) File No.: 413-0519

13 Complainant,

) **ACCUSATION IN SUPPORT OF
REVOCATION OF CALIFORNIA
RESIDENTIAL MORTGAGE LENDING
LICENSE**

14 v.

15 DELTA FUNDING CORPORATION doing
16 business as FIDELITY MORTGAGE,

17 Respondent.

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20 The Complainant, California Corporations Commissioner ("Commissioner"), is informed and
21 believes, and based upon such information and belief, alleges and charges Respondent as follows:

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I.

23 Respondent, Delta Funding Corporation doing business as Fidelity Mortgage ("Respondent")
24 is a residential mortgage lender licensed by the California Department of Corporations
25 ("Department") pursuant to the California Residential Mortgage Lending Act ("CRMLA")
26 (California Financial Code sections 50000 *et seq.*). Respondent has its principal place of business
27 located at 1000 Woodbury Road, Suite 200, Woodbury, NY 11797-9003.

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II.

On or about December 17, 2007, the Commissioner notified Respondent in writing that, pursuant to Financial Code section 50200, it was required to submit an annual audit report ("Audit Report") for its fiscal year ending on December 31, 2007 no later than April 15, 2008. Respondent was notified in the letter that its failure to file the required reports may result in license revocation and/or an assessment of fines pursuant to Financial Code section 50326, an immediate examination by the Commissioner pursuant to Financial Code section 50307, and/or revocation of the license.

On or about May 30, 2008, the Commissioner again notified Respondent in writing that it had failed to file its Audit Report and it was required to file the Audit Report within ten (10) days of the date of the letter.

Respondent has yet to file its Audit Report required by Financial Code section 50200.

III.

Pursuant to Financial Code section 50307, 50401 and California Code of Regulations, title 10, section 1950.314.8, all licensees under the CRMLA are required to file an annual Report of Principal Amount of Loans and Aggregate Amount of Loans Serviced ("Activity Report") on or before March 1st of each year for the preceding 12-month period ended December 31.

On or about February 1, 2008, an Activity Report form was sent to all CRMLA licensees with a notice that its Activity Report was due on or before March 1, 2008. Respondent has yet to submit the Activity Report to the Commissioner.

IV.

On or about December 7, 2007, Respondent filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware. Due to the fact that Respondent filed bankruptcy, the Commissioner did not assess a penalty for non-filing of the Audit Report pursuant to Financial Code section 50326.

V.

Financial Code section 50326 states:

If any licensee fails to do any of the following, the licensee shall forfeit to the people of the state a sum of up to one hundred dollars (\$100) for every day up to the 10th day: (a) to make any report required by law or by the commissioner

1 within 10 days from the day designated for the making of the report, or within
2 any extension of time granted by the commissioner, or (b) fails to include
3 therein any matter required by law or by the commissioner. Thereafter,
4 any failure shall constitute grounds for the suspension or revocation of the
license held by the residential mortgage lender or residential mortgage
loan servicer.

5 Financial Code section 50327 provides in pertinent part:

- 6 (a) The commissioner may, after notice and a reasonable opportunity to be
7 heard, suspend or revoke any license if the commissioner finds that: (1) the
8 licensee has violated any provision of this division or any rule or order of
9 the commissioner thereunder; or (2) any fact or condition exists that, if it
10 had existed at the time of the original application for license, reasonably
would have warranted the commissioner in refusing to issue the license
originally.

11 Financial Code section 50311 states:

12 Nothing in this law shall preclude a person whose license has been
13 suspended or revoked, summarily or otherwise, from making a
14 residential mortgage loan pursuant to a commitment issued by that
15 person prior to the suspension or revocation. A prospective borrower
16 who received a commitment issued by a person whose license has
been suspended or revoked may, prior to the closing of the loan,
terminate the commitment or receive a refund of all money paid to
that person.

17 **VI.**

18 The Commissioner finds that, by reason of the foregoing, Delta Funding Corporation doing
19 business as Fidelity Mortgage has violated California Financial Code sections 50200, 50307, 50401
20 and California Code of Regulations, title 10, section 1950.314.8, and based thereon grounds exist to
21 revoke the residential mortgage lender license of Delta Funding Corporation doing business as
22 Fidelity Mortgage.

23 WHEREFORE, IT IS PRAYED that the residential mortgage lender license of Delta Funding
24 Corporation doing business as Fidelity Mortgage be revoked and, pursuant to Financial Code section
25 50311, Delta Funding Corporation doing business as Fidelity Mortgage be given a transition period
26 of sixty (60) days within which to complete any loans for which it had prior commitments.

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DATED: September 5, 2008
San Diego, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Afsaneh Eghbaldari
Corporations Counsel