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8
9 BEFORE THE DEPARTMENT OF CORPORATIONS
OF THE STATE OF CALIFORNIA

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11 In the Matter of

12 THE CALIFORNIA CORPORATIONS
13 COMMISSIONER,

14
15 Complainant,

16 v.

17 MICHAEL S. GEST; JOANNA M. GEST;
18 STICKING TOGETHER ATHLETES
19 RETIREMENT, LLC,

20 Respondents.

Case No.

ACCUSATION

1. REVOKING THE FINANCE LENDERS
LICENSE OF STICKING TOGETHER ATHLETES
RETIREMENT, LLC, PURSUANT TO
FINANCIAL CODE SECTION 22714

2. BARRING MICHAEL S. GEST FROM ANY
POSITION OF EMPLOYMENT, MANAGEMENT
OR CONTROL OF ANY FINANCE LENDER
PURSUANT TO FINANCIAL CODE SECTION
22169

3. BARRING JOANNA M. GEST FROM ANY
POSITION OF EMPLOYMENT, MANAGEMENT
OR CONTROL OF ANY FINANCE LENDER
PURSUANT TO FINANCIAL CODE SECTION
22169

21 The Complainant California Corporations Commissioner (“Commissioner”) is informed
22 and believes, and based upon such information and belief, alleges and charges Respondents as
23 follows:

24 **I.**
INTRODUCTION

25 1. Respondent Sticking Together Athletes Retirement, LLC, (“STAR, LLC”) is a
26 California limited liability company formed on December 1, 2006, with a principal place of
27 business at 2635 Cleveland Avenue, Suite 8, Santa Rosa, CA 95403, that thereafter moved to
28 100 Brown Street, Suite 220, Sebastopol, CA 95472. On March 16, 2007 Respondent Michael

1 S. Gest (“Michael Gest”) filed with the California Secretary of State a Statement of Information
2 representing that he was the President, Chief Executive Officer and Manager of STAR, LLC.

3 2. On December 6, 2006 STAR, LLC filed with the Commissioner an application for
4 a California Finance Lender license (“CFL license”). The application was not signed by
5 Respondent Joanna M. Gest (“Joanna Gest”), the wife of Michael Gest, on behalf of STAR,
6 LLC, until May 7, 2007. In the application Joanna Gest misrepresented that she was the only
7 person who was an officer, director, principal, manager, control person, or person in charge of
8 the business of STAR, LLC. As a result, on April 24, 2008 the Commissioner issued to STAR,
9 LLC a license to act as a finance lender pursuant to the Finance Lenders Law of the State of
10 California (Financial Code section 22000 et seq.).

11 3. In fact, since its formation on December 6, 2006 and to date, Respondent Michael
12 Gest has been a manager, control person, or person in charge of the business of STAR, LLC, and
13 the failure to disclose this in the CFL license application was a violation of California Financial
14 Code section 22101 and Code of Regulations, Title 10, section 1422.

15 4. This Accusation is submitted in support of the Commissioner’s Notice of Intent to
16 Revoke the CFL license of STAR, LLC pursuant to Financial Code section 22714, and Notice of
17 Intent to Bar Respondents Michael Gest and Joanna Gest from any position of employment,
18 management or control of any finance lender pursuant to Financial Code section 22169. The
19 California Commissioner of Corporations has continuous authority to exercise the powers set
20 forth in the Finance Lenders Law and make general rules and regulations and specific rulings,
21 demands, and findings for the enforcement of those laws. (Financial Code sections 22005,
22 22150, and 22705.).

23 **II.**
24 **STATEMENT OF FACTS**

25 **A. The Restricted Real Estate Broker License of Michael Gest**

26 5. Respondent Michael Gest was licensed with the California Department of Real Estate
27 as a real estate broker and president of Brookwood Mortgage and Investment Corporation, when on
28 March 7, 2005 that Department filed an Accusation seeking the suspension or revocation of his
license. The Accusation followed an audit that showed that Brookwood Mortgage was improperly

1 maintaining trust accounts, among other things, in violation of California Real Estate Law.

2 Following a two day hearing, the Department of Real Estate formally ordered on December 13, 2005,
3 that the licensing rights of Michael Gest were restricted, allowing him to engage in licensed activities
4 under the heightened supervision of a restricted license.

5 6. Soon thereafter, finding evidence of continuing unlawful activity in the maintenance
6 of records, the Department of Real Estate issued an "Order Suspending Restricted Real Estate
7 License" of Michael Gest on December 12, 2007. Michael Gest signed a declaration on March 21,
8 2008 agreeing to voluntarily surrender his real estate license without a hearing, which was formally
9 accepted by the Department of Real Estate on May 9, 2008.

10 **B. History of Efforts by Michael Gest to Obtain a California Finance Lender's License**
11 **from the Department of Corporations**

12 7. On June 24, 2005 Michael Gest, as President, filed an application for a CFL license
13 with the Department of Corporations (hereafter "the Department") on behalf of Brookwood Mortgage
14 and Investment Corporation. In the application Michael Gest provided that he was the sole owner,
15 officer, and director and that he alone would be responsible for the conduct of the lending activity and
16 in charge of the company's business. He indicated that the proposed operations would be the making
17 of commercial and consumer loans, secured and unsecured, for minimum amounts of \$5,000. On
18 August 26, 2005 the Commissioner informed Michael Gest that it had discovered that he was the
19 subject of the Department of Real Estate Accusation dated March 7, 2005 and that until that agency
20 action was completed the application could not be further considered. After that Accusation resulted
21 in the December 13, 2005 restriction of his Department of Real Estate license, the Commissioner
22 informed Michael Gest that the restriction provided cause to deny the CFL license application
23 pursuant to Financial Code section 22109(a)(2) (as an act substantially related to his qualifications to
24 engage in the business of finance lending), and 22109(a)(3), (as a violation of a similar California
25 regulatory scheme). Michael Gest was informed that it was the Department's intent to deny the
26 application and he was invited to withdraw the application. The application was so withdrawn on
27 May 3, 2006.

28 8. On February 16, 2006 a second application for a CFL license was filed with the

1 Department on behalf of Income Security Investment, LP. This application was signed by Michael
2 Gest, not as a partner of this limited partnership, but as president of Brookwood Mortgage and
3 Investment Corporation, which was to be the general partner. According to the application Michael
4 Gest was the sole shareholder, officer, and director of Brookwood and the person responsible for the
5 conduct of the lending activity and in charge of the business of Income Security Investment, LP. On
6 July 11, 2006 the Department informed the limited partnership that due to Michael Gest's real estate
7 license restriction, it was the intention of the Department to deny the application pursuant to Financial
8 Code section 22109(a)(2) and (3). Pursuant to the Department's invitation, the application was
9 formally withdrawn on February 26, 2007.

10 9. On November 16, 2007 an application for a CFL license on behalf of ABC America's
11 Best Choice Financial Group, Inc. was signed by the corporation's President Clarke Doyle. The
12 application was filed with the Department on January 8, 2008. In the application Michael Gest was
13 listed as the company's secretary and a director. On March 11, 2008 the Department wrote to ABC
14 that until the removal of the then recent December 2007 suspension of Michael Gest's restricted real
15 estate license, a CFL license application could not be approved. Doyle next stated that Michael Gest
16 was no longer an owner, and then no longer an officer, but when the Department asked in a letter of
17 April 28, 2008 if Michael Gest would be employed at the company, there was no further response,
18 and on July 10, 2008 the Department gave notice that the application was considered withdrawn.

19 10. As stated in the introduction above, on December 6, 2007 an application for a CFL
20 license was filed on behalf of STAR, LLC, signed under penalty of perjury by Joanna Gest, the wife
21 of Michael Gest. She stated that she was the only person who was an officer, director, principal,
22 manager, control person, or person in charge of the business, and only direct and indirect owner of
23 more than 10% of STAR, LLC, but she also listed Staars Wealth Corporation as a manager of STAR,
24 LLC. After the Department asked for a similar listing of persons in any such positions as to Staars
25 Wealth Corporation, the law firm representing Joanna Gest wrote that she was the only principal,
26 officer and director and 100% shareholder of that corporation. Accordingly, on April 24, 2008, the
27 Department issued a CFL license, number 6053991, to STAR, LLC. The Department would not have
28

1 issued the license had the actual management and control by Michael Gest of STAR, LLC been
2 disclosed.

3 **C. Examination of STAR, LLC, by the Department of Corporations**

4 11. On December 19, 2008 the Department of Corporation's examiner Annette Yeung
5 made an unannounced visit to STAR, LLC at 100 Brown Street, Sebastopol, CA, in order to observe
6 the management of the CFL licensee. There were just three workers present at the time of the
7 examination: a receptionist located just inside the entry doorway, another staff member at a cubicle,
8 and Michael Gest in his enclosed office. Mr. Gest stated that his wife Joanna was not in the office
9 that day and added that she had a desk across from his desk. Throughout the examination Michael
10 Gest performed all management functions, answered all questions about the company, and provided
11 all finance lending related documents requested (copied for Mr. Gest by other staff members).
12 Joanna Gest was not present and had no communication with the Department examiner at any point
13 during the examination. Mr. Gest told examiner Yeung that he was a former broker but now only an
14 unpaid administrative assistant for STAR, LLC and for Stars (elsewhere spelled "Staars") Wealth
15 Corporation, and yet at the front desk was a business card that identified Mr. Gest as a "principal" of
16 "STAR". On February 4, 2008 Michael Gest signed a Subscription Agreement for the purchase of
17 membership interests on behalf of STAR, LLC and as President of Sticking Together Athletes
18 Retirement, Inc., Manager of the LLC.

19 **III**

20 **CALIFORNIA FINANCE LENDERS LAW**

21 12. California Financial Code section 22100 provides that no person, including a
22 corporation and limited liability company, shall engage in the business of a finance lender or
23 broker without obtaining a license from the Commissioner.

24 13. Financial Code section 22101, subdivision (a), provides that an application for a
25 license as a finance lender or broker shall be in the form and contain the information that the
26 Commissioner may by rule require. Financial Code section 22105 provides that when the
27 applicant is a limited liability company "the commissioner shall investigate the applicant, its
28 principal officers, directors, managing member, and persons owning or controlling, directly or

1 indirectly, 10% or more of the outstanding equity securities or any person responsible for the
2 conduct of the applicant’s lending activities in this state.”

3 14. California Code of Regulations (“C.C.R.”), Title 10, section 1422 requires the use
4 of a specific form when applying for a CFL license, the form used by Respondents. It requires
5 that an applicant when a limited liability company list the names of the President/Chief
6 Executive Officer, manager (in the instructions for filing out the form at Item 6c “managers” are
7 defined as “persons with authority to manage the operations of the organization”), each person
8 who will be in charge of the place of business, each person who will be responsible for the
9 conduct of the applicant’s lending activity, and each person who owns or controls, directly or
10 indirectly, 10% or more of the applicant.

11 15. In order to allow the Department to perform the investigation mandate of
12 Financial Code section 22105, C.C.R. section 1422 further requires the CFL license applicant to
13 complete and submit a Statement of Identity and Questionnaire (“SIQ”) for each person listed in
14 application. Among other things, the SIQ requires that as to each person listed the following be
15 disclosed:

- 16 • any order, judgment or decree of any court or any governmental agency or
17 administration, temporarily or permanently restraining or enjoining the person listed from
18 engaging in or continuing any conduct practice or employment;
- 19 • whether any person listed is currently, or has been within the last ten years, under federal,
20 state or local investigation for possible violation of any law, ordinance, licensing, or
21 regulatory scheme; and
- 22 • whether any person listed has had any license to engage in business refused, suspended,
23 revoked, or surrendered subject to a settlement, or any other similar action.

24 Both the CFL license application form and SIQ are to be signed under penalty of perjury.

25 16. Financial Code section 22108 provides that the Commissioner may by regulation
26 require the licensee to file any changes in the information provided in an application for a CFL
27 license. C.C.R. section 1409 requires that each licensee file an amendment to the CFL license
28 application in the event of any change in the officers, directors, and other persons required to be

1 named in the application. This admonishment is also placed on the execution section of the
2 application form just above the signature of Joanna Gest.

3 17. Financial Code section 22159 provides that each year a CFL licensee must file
4 with the Commissioner an annual report. On April 29, 2009, Joanna Gest as President of STAR,
5 LLC, filed an annual report that failed to include any reference or information relating to
6 Michael Gest.

7 18. The Respondents have not at any time, whether by application amendment, an
8 annual report or otherwise, filed notice of any involvement of Michael Gest in the management,
9 control, or ownership of STAR, LLC.

10 19. Financial Code section 22714 provides in pertinent part:

11 (a) The commissioner shall suspend or revoke any license, upon
12 notice and reasonable opportunity to be heard, if the commissioner
13 finds any of the following:

14 (1) The licensee has failed to comply with any demand,
15 ruling, or requirement of the commissioner made pursuant to and
16 within the authority of this division.

17 (2) The licensee has violated any provision of this division
18 or any rule or regulation made by the commissioner under and
19 within the authority of this division.

20 (3) A fact or condition exists that, if it had existed at the
21 time of the original application for the license, reasonably would
22 have warranted the commissioner in refusing to issue the license
23 originally....

24 20. California Financial Code section 22109 provides in pertinent part:

25 (a) Upon reasonable notice and opportunity to be heard, the
26 commissioner may deny the application for any of the following
27 reasons:

28 (1) A false statement of a material fact has been made in
the application.

(2) The applicant or an officer, director, general partner,
person responsible for the applicant's lending activities in this
state, or person owning or controlling, directly or indirectly, 10
percent or more of the outstanding interests or equity securities of
the applicant has, within the last 10 years, ...committed an act
involving dishonesty, fraud, or deceit if the crime or act is
substantially related to the qualifications, functions or duties of a
person engaged in business in accordance with this division.

1 (3) The applicant or any officer, director, general partner,
2 or person owing or controlling directly or indirectly, 10 percent or
3 more of the outstanding interests or equity securities of the
4 applicant has violated any provision of this division or the rules
thereunder or any similar regulatory scheme of the State of
California or foreign jurisdiction....

5 21. Financial Code section 22169, enacted on July 7, 2007, provides in pertinent part:

6 (a) The commissioner may, after appropriate notice and
7 opportunity for hearing, by order, censure or suspend for a period
8 not exceeding 12 months, or bar from any position of employment,
9 management, or control any finance lender, broker, or any other
10 person, if the commissioner finds either of the following:

11 (1) That the censure, suspension, or bar is in the public
12 interest and that the person has committed or caused a violation of
13 this division or rule or order of the commissioner, which violation
14 was either known or should have been known by the person
15 committing or causing it or has caused material damage to the
16 finance lender, or to the public.

17 (2) That the person has been convicted of or pleaded nolo
18 contendere to any crime, or has been held liable in any civil action
19 by final judgment, or any administrative judgment by any public
20 agency, if that crime or civil or administrative judgment involved
21 any offense involving dishonesty, fraud, or deceit, or any other
22 offense reasonably related to the qualifications, function, or duties
of a person engaged in the business in accordance with the
provisions of this division....

(c) Upon receipt of a notice of intention to issue an order pursuant
to this section, the person who is the subject of the proposed order
is immediately prohibited from engaging in any activities subject
to licensure under the law.

(d) Persons suspended or barred under this section are prohibited
from participating in any business activity of a finance lender and
from engaging in any business activity on the premises where a
finance lender is conducting business.”

23
24 22. As evidenced by the Statement of Information he filed with the Secretary of State
25 on March 16, 2007, the Subscription Agreement he signed on February 4, 2008, and the
26 examination by Department of Corporations examiner Annette Yeung on December 19, 2008,
27 Michael Gest was the President, Chief Executive Officer and Manager of STAR, LLC. He also
28 owned or controlled, directly or indirectly 10% or more of STAR, LLC, through his marriage
with Joanna Gest.

1 23. Complainant finds that Respondents STAR, LLC, Joanna Gest, and Michael Gest
2 violated Financial Code sections 22101(a) and 22109(a)(1) and (3), and C.C.R. section 1422,
3 when they failed to identify and list Michael Gest in the initial application and SIQ, and violated
4 Financial Code section 22108 and C.C.R. section 1409 when they failed to identify and list
5 Michael Gest through an amendment or annual report. If Michael Gest had been properly listed
6 in the CFL license application or other filings, the Department of Real Estate investigation,
7 accusation, and later license restriction, would have been uncovered, and the Commissioner
8 would have rejected the CFL license application of STAR, LLC., as it had rejected two previous
9 applications associated with Michael Gest.

10 24. Complainant finds that by reason of the foregoing, grounds exist, and it is in the
11 public interest, to revoke the finance lenders license of Respondent STAR, LLC under Financial
12 Code section 22714 and 22109(a)(1) and (3).

13 25. Complainant further finds that by reason of these acts and omissions, grounds
14 exist to bar Joanna Gest from any employment, management or control of any California finance
15 lender or broker under Financial Code section 22169.

16 26. Complainant further finds that by reason of the foregoing acts and omissions,
17 grounds exist to bar Michael Gest from any employment, management or control of any
18 California fiancé lender or broker under Financial Code section 22169.

19 WHEREFORE, IT IS PRAYED:

20 1. That the California Finance Lender license of Sticking Together Athletes
21 Retirement, LLC, be revoked pursuant to Financial Code sections 22714, 22109, and
22 22108, and California Code of Regulations, Title 10, sections 1409, 1422 and 1446;

23 2. That Michael S. Gest be barred in the State of California from any position of
24 employment, management or control of any California finance lender; pursuant to
25 California Financial Code sections 22109(a)(1) and (3) and 22169;

26 4. That Joanna M. Gest be barred in the State of California from any position of
27 employment, management or control of any California finance lender pursuant to
28 Financial Code sections 22109(a)(1) and (3) and 22169.

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Dated: June 25, 2009

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
EDWARD KELLY SHINNICK
Corporations Counsel
California Department of Corporations