

1 Dennis H. Doss, Bar No. 81839
DOSS LAW, LLP
2 29042 Bouquet Canyon Road
Silverado, CA 92676
3 Tel.: (949) 752-5370
E-mail: dennis@dossllaw.com

4 Attorneys for Petitioners, KS CAPITAL, INC., BABAK KASHANI
5

6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES –STANLEY MOSK COURTHOUSE**

11	KS CAPITAL, INC. and BABAK KASHANI,	)	Case No. 19STCP02121
12	Petitioners,	)	OAH Case No. 2018080260
13		)	DRE Case No. H-41033 LA
14	vs.)	
15	DEPARTMENT OF REAL ESTATE,	)	PETITION FOR WRIT OF
16	STATE OF CALIFORNIA,	)	ADMINISTRATIVE MANDAMUS
17	Respondent.	)	[California Administrative Procedure Act
18		)	§11523; CCP §§ 1086, 1094.5; Govt. Code
19		)	§11523]

20
21 Petitioners, KS CAPITAL, INC. and BABAK KASHANI allege:

22 **PETITION**

- 23 1. Petitioners are the Respondents to a Department of Real Estate action entitled “*In*
24 *the Matter of the Accusation of: KS CAPITAL, INC. and BABAK KASHANI*” DRE Case No. H-
25 41033 LA; OAH Case No. 2018080260. A true and correct copy of the Accusation is attached
26 hereto as Exhibit “A.”
- 27 2. The California Department of Real Estate is a real party in interest.
- 28 3. On February 5, 2019, a hearing was held at the Office of Administrative Hearings

1 (“OAH”) in Los Angeles to determine whether valid grounds exist for discipline against the real
2 estate licenses of Petitioners.

3 4. Following the presentation of evidence and on oral argument, on March 14, 2019
4 the OAH found in favor of the DRE, ordering that the license rights of Petitioners be suspended
5 for 90 days, stayed for one year upon the satisfactions of conditions listed in the Order, a true and
6 correct copy of which is attached hereto as Exhibit “B.”

7 5. On April 22, 2019 the DRE adopted the OAH decision to be effective May 15,
8 2019 (See Exhibit “B”).

9 6. On May 4, 2019 Petitioners served their Motion for Reconsideration, a true and
10 correct copy of which is attached hereto as Exhibit “C.”

11 7. The DRE partially granted the Motion for Reconsideration, a true and correct copy
12 of which is attached hereto as Exhibit “D.”

13 8. The OAH Decision adopted by the DRE should be set aside and the Accusation
14 dismissed for these reasons:

15 A. The Decision contains an error of law in the application of law, specifically
16 Financial Code Sections 4970 et seq. and 4995 et seq. It is undisputed that the mortgage
17 loan in question was a business loan secured by the borrower’s principal residence.
18 Section 4970 and 4995 do not apply to business purpose loans but rather consumer loans,
19 defined by statute as loans for personal, family or household purposes.

20 B. At the hearing the DRE struck the portions of the Accusation dealing with
21 allegedly improperly prepared Lender/Purchase Disclosure Statements. Therefore no
22 evidence or argument was presented by Respondents on that topic. Nonetheless the OAH
23 ruled on those stricken allegations, depriving Respondents of due process of law.

24 C. The Order Granting Reconsideration (Exhibit “D”) requires Respondent
25 Kashani to complete, within one year, “a college level course on Mortgage Brokering and
26 Lending.” Kashani resides in Orange County. No college within driving distance offers
27 such a course. Thus, the order requires the something that is impossible.

28 D. The remaining items of non-compliance by Petitioners are insufficient by

1 themselves or taken together to constitute negligence or incompetence warranting
2 discipline.

3 E. Discipline against Petitioner Kashani was unwarranted because the OAH
4 found that he had not failed to adequately supervise and control the activities of petitioner
5 KS Capital, Inc. requiring a real estate license.

6 Alternatively, the matter should be remanded to the Respondent for further proceedings
7 consistent with the Court ruling.


8 **PRAYER**

9 WHEREFORE, Petitioners prays this Court:

10 9. Either (a) issue its peremptory writ of mandate directing Respondent, Department
11 of Real Estate to set aside and vacate its April 22, 2019 Decision, as amended, and dismiss the
12 Accusation or (b) issue an alternative writ directing Respondent, Department of Real Estate, to
13 show cause why it should not so be directed, and upon return to the alternative writ, issue a
14 peremptory writ as set forth in subparagraph (a), above.

15 10. Award Petitioners its costs incurred in this proceeding.

16 Dated: May 30, 2019

17 By: Doss Law, LLP
18 
19 By: _____
20 Dennis H. Doss
21 Attorneys for Petitioners
22
23
24
25
26
27
28

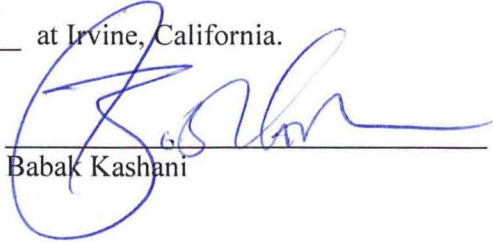
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Babak Kashani, declare as follows:

I am a petitioner in this matter and president of petitioner KS Capital, Inc. and authorized to provide this verification on its behalf. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts alleged in the Petition are true to my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on 5/28/19 at Irvine, California.



Babak Kashani

EXHIBIT A

FILED

MAY - 8 2018

BUREAU OF REAL ESTATE

By *[Signature]*

1 DIANE LEE, Counsel (SBN 247222)
2 Bureau of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013

4 Telephone: (213) 576-6982
5 (Direct) (213) 576-6907

6
7
8 BEFORE THE BUREAU OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11	In the Matter of the Accusation of	)	No. H- 41033 LA
12))	
13	) KS CAPITAL, INC.; and)	
14	) BABAK KASHANI, individually and as	)	<u>ACCUSATION</u>
15	) designated officer of KS Capital, Inc.,)	
))	
	) Respondents.)	
))	

16
17 The Complainant, Chika Sunquist, a Supervising Special Investigator of the
18 State of California, acting in her official capacity, for cause of Accusation against KS
19 CAPITAL, INC. ("KSCI") and BABAK KASHANI ("KASHANI") aka Bobby Kashani,
20 individually and as designated officer of KS Capital, Inc., is informed and alleges as follows:

21 1.

22 The Complainant, Chika Sunquist, acting in her official capacity as Supervising
23 Special Investigator of the State of California, makes this Accusation.

24 ///

25 ///

26 ///

27 EXHIBIT "A"

1 2.

2 All references to the "Code" are to the California Business and Professions
3 Code, and all references to "Regulations" are to Title 10, Chapter 6, California Code of
4 Regulations unless otherwise specified.

5 3.

6 A. KS CAPITAL, INC.: Respondent KSCI is presently licensed and/or has
7 license rights issued by the Bureau of Real Estate as a real estate corporate broker (license no.
8 01950951). KSCI was originally licensed as a corporate real estate broker on or about March
9 12, 2014. KSCI has had the registered fictitious business names of "Parse Mortgage Services"
10 from on or about March 12, 2014 through the present and "Parse Real Estate" from on or about
11 May 7, 2014 through the present. From on or about March 28, 2017 through the present, KSCI
12 has had a mortgage loan originator ("MLO") license endorsement (NMLS no. 1184199). From
13 on or about March 12, 2014 through the present, KSCI's designated officer has been
14 KASHANI.

15 B. BABAK KASHANI: Respondent KASHANI is presently licensed
16 and/or has license rights issued by the Bureau of Real Estate as a real estate broker (license no.
17 01766217). KASHANI was originally licensed with a real estate broker license on or about
18 August 9, 2006. From on or about January 1, 2014 through the present, KASHANI has had an
19 MLO license endorsement (NMLS no. 244027).

20 4.

21 Whenever reference is made in an allegation in this Accusation to an act or
22 omission of "Respondents," such allegation shall be deemed to mean that the officers, directors,
23 employees, agents, and real estate licensees employed by or associated with Respondents
24 committed such act or omission while engaged in the furtherance of the business or operations
25 of Respondents and while acting within the course and scope of their corporate authority and
26 employment, including, but not limited to, KSCI and KASHANI.

1 5.

2 At all times mentioned, in Orange County, KSCI and KASHANI engaged in the
3 business of real estate brokers conducting licensed activities within the meaning of Code
4 section 10131(d). KSCI and KASHANI engaged in soliciting borrowers or lenders for,
5 negotiating loans, collecting payments for, or performing services for borrowers or lenders or
6 note owners in connection with loans secured directly or collaterally by liens on real property or
7 on a business opportunity.

8
9 (Trust Fund Audit)

10 6.

11 On or about September 30, 2016, the Bureau of Real Estate completed an audit
12 examination of KSCI to determine whether KSCI and KASHANI handled and accounted for
13 trust funds and conducted its mortgage loan activities in accordance with the Real Estate Law
14 and Regulations. The Bureau of Real Estate was not able to make certain determinations
15 because KSCI and KASHANI failed to make books and records available to the Bureau of Real
16 Estate. The audit examination covered a period of time beginning on January 1, 2014 and
17 ended on December 31, 2016. The audit examination revealed violations of the Code and the
18 Regulations set forth in the following paragraphs, and more fully discussed in Audit Report
19 LA150060 and the exhibits and work papers attached to said audit report.

20 7.

21 In the course of activities described in Paragraph 5, above, and during the audit
22 examination period in Paragraph 6, above, Respondents KSCI and KASHANI acted in
23 violation of the Code and the Regulations as set forth below:

24 (a) Failed to provide complete Lender Purchase Disclosure Statements for at
25 least three (3) loan files funded by private investors (single lender), in violation of Code
26 sections 10232.4 and 10232.5 and Regulations section 2846. The Lender Purchase Disclosure
27

1 Statements failed to indicate the encumbrances expected or anticipated in a lien being recorded
2 against the property securing the promissory note. These properties include, but are not limited
3 to:

- 4 • 2170 Century Park E., #208, Los Angeles, CA 90067;
- 5 • 433 E. Walnut Ave., Rialto, CA 92376; and
- 6 • 26973 Del Gado, Dana Point, CA 92629.

7 (b) Failed to provide complete and accurate Lender Purchase Disclosure
8 Statements for at least three (3) loan files funded by private investors (single lender), in
9 violation of Code sections 10240(a) and 10240.3 and Regulations sections 2840 and 2842. The
10 Lender Purchase Disclosure Statements failed to disclose the anticipated and current liens
11 and/or stated the wrong anticipated loan amount on the subject property. These properties
12 include, but are not limited to:

- 13 • 2170 Century Park E., #208, Los Angeles, CA 90067;
- 14 • 433 E. Walnut Ave., Rialto, CA 92376; and
- 15 • 26973 Del Gado, Dana Point, CA 92629.

16 Also, the Mortgage Loan Disclosure Statement for at least one (1) loan file funded by a
17 financial institutional lender, Fremont Bank, was inaccurate because the current liens and/or
18 anticipated loan amount were incorrect for the subject property at 125 34th St., Newport Beach,
19 CA 92663.

20 (c) Charged an excess of points and fees in a covered loan for borrower B.
21 Weinberg, in violation of California Financial Code section 4979.6. KSCI originated this
22 covered loan that financed points and fees totaling \$4,290.00, which exceeded one thousand
23 dollars (\$1,000) and exceeded 6 percent of the original principal balance, exclusive of points
24 and fees.

25 (d) Negotiated and made a higher-priced mortgage loan for a consumer B.
26 Weinberg's principal dwelling in which the annual percentage rate exceeded the average prime
27

1 offer rate for a comparable transaction, in violation of California Financial Code section
2 4995.2(h)(2). The annual percentage rate ("APR") of the loan exceeded 3.5 or more percentage
3 points for a loan secured by a second loan.

4 (e) Failed to obtain and retain a signed statement from lenders/investors that
5 the lenders/investors met one or both of the qualifications of income or net worth as required, in
6 violation of Code section 10232.3(b).

7 (f) KASHANI failed to exercise reasonable control and supervision over the
8 activities conducted on behalf of KSCI as necessary to secure full compliance with the Real
9 Estate Law, including, but not limited to, establishing policies, rules, procedures, and systems
10 to review, oversee, and inspect the handling of trust funds, in violation of Code sections
11 10159.2 and 10177(h) and Regulations section 2725.

12 8.

13 The conduct of Respondents AAREAU and WHEELER described in Paragraph
14 8, above, violated the Code and the Regulations as set forth below:

15 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
16 7(a)	Code sections 10232.4 and 10232.5 and Regulations section 2846
17 7(b)	Code sections 10240(a) and 10240.3 and Regulations sections 2840 and 18 2842
19 7(c)	California Financial Code section 4979.6
20 7(d)	California Financial Code section 4995.2(h)(2)
21 7(e)	Code section 10232.3(b)
22 7(f)	Code sections 10159.2 and 10177(h) and Regulations section 2725

23 The foregoing violations constitute cause for discipline of the real estate license and license
24 rights of KSCI and KASHANI under the provisions of Code sections 10177(d), 10177(g), and
25 10177(h).

26 ///

27

1 COSTS

2 9.

3 Code section 10106 provides, in pertinent part, that in any order issued in
4 resolution of a disciplinary proceeding before the bureau, the Commissioner may request the
5 administrative law judge to direct a licensee found to have committed a violation of this part to
6 pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

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

11 WHEREFORE, Complainant prays that a hearing be conducted on the
12 allegations of this Accusation and that upon proof thereof, a decision be rendered imposing
13 disciplinary action against all licenses and/or license rights under the Real Estate Law (Part 1 of
14 Division 4 of the California Business and Professions Code) of Respondents KS CAPITAL,
15 INC. and BABAK KASHANI, individually and as designated officer of KS Capital, Inc., MLO
16 license endorsements of Respondents KS CAPITAL, INC. and BABAK KASHANI,
17 individually and as designated officer of KS Capital, Inc., for the cost of investigation and
18 enforcement as permitted by law, for audit costs as permitted by law, and for such other and
19 further relief as may be proper under applicable provisions of law.

20 Dated at Sacramento, California: May 3, 2018.

21
22 
23 Chika Sunquist
Supervising Special Investigator

24 cc: KS Capital, Inc.
25 Babak Kashani
26 Chika Sunquist
27 Sacto
Enforcement
Audits – Isabel Beltran

EXHIBIT B

BEFORE THE DEPARTMENT OF REAL ESTATE

FILED

STATE OF CALIFORNIA

APR 25 2019

DEPT. OF REAL ESTATE

By 

In the Matter of the Accusation of:

KS CAPITAL, INC.; and
BABAK KASHANI, individually and as
designated officer of KS Capital, Inc.

Respondents

) DRE No. H-41033 LA
)
) OAH No. 2018080260

DECISION

The Proposed Decision dated March 14, 2019, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

Pursuant to Government Code Section 11521, the Department of Real Estate may order reconsideration of this Decision on petition of any party. The party seeking reconsideration shall set forth new facts, circumstances, and evidence, or errors in law or analysis, that show(s) grounds and good cause for the Commissioner to reconsider the Decision. If new evidence is presented, the party shall specifically identify the new evidence and explain why it was not previously presented. The Department's power to order reconsideration of this Decision shall expire 30 days after mailing of this Decision, or on the effective date of this Decision, whichever occurs first. The right to reinstatement of a revoked real estate license or to the reduction of a penalty is controlled by Section 11522 of the Government Code. A copy of Sections 11521 and 11522 and a copy of the Commissioner's Criteria of Rehabilitation are attached hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on May 15, 2019.

IT IS SO ORDERED April 22, 2019

DANIEL SANDRI
ACTING REAL ESTATE COMMISSIONER



EXHIBIT "B"

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KS CAPITAL, INC.; and
BABAK KASHANI, individually and as
designated officer of KS Capital, Inc.,

Respondents.

DRE No. H-41033 LA

OAH No. 2018080260

PROPOSED DECISION

This matter was heard on February 5, 2019, in Los Angeles, California, by Laurie R. Pearlman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California. Chika Sunquist (complainant), Supervising Special Investigator, was represented by Diane Lee, Counsel for the Department of Real Estate (Department). Respondent Babak Kashani (Kashani) was present at the hearing on behalf of himself and respondent KS Capital, Inc. (KSCI) (collectively, respondents). Respondents were represented by Dennis H. Doss, Attorney at Law.

At the hearing, complainant verbally amended the Accusation, as follows: on page 3, lines 25 to 26 and page 4, lines 1-6 were deleted; on page 4, lines 7 and 10, "Lender Purchase" was deleted and replaced with "Mortgage Loan"; on page 4, line 25 "a" was deleted; on page 5, line 13, "AAREU and WHEELER" were deleted and replaced with "KSCI and KASHANI"; and on page 5, line 14, "8" was deleted and replaced with "7". These amendments were made by interlineation on the Accusation in exhibit I.¹

Oral and documentary evidence was received. The record was left open until February 12, 2019, to enable complainant to file an updated license certification and any course recommendations. Complainant's "Supplemental Documents" were timely filed, marked for identification as Exhibit 16, and admitted into evidence. The matter was submitted for decision on February 12, 2019.

///

¹ All further statutory references are to the Business and Professions Code. All references to Regulation are to the California Code of Regulations, title 10.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity. Respondents filed a timely Notice of Defense, requested a hearing, and this hearing ensued. All jurisdictional requirements have been met.

2. KSCI is currently licensed or has license rights issued by the Department as a real estate corporate broker, with license number 01950951. KSCI was originally licensed as a corporate real estate broker on March 12, 2014. Since March 12, 2014, KSCI has had the registered fictitious business names of "Parse Mortgage Services", and since May 7, 2014, has had the fictitious business name of "Parse Real Estate". Since March 28, 2017, through the present, KSCI has had a mortgage loan originator (MLO) license endorsement (NMLS number 1184199.) Since March 12, 2014, KSCI's designated officer has been Kashani.

3. Kashani is currently licensed or has license rights issued by the Department as a real estate broker, with license number 01766217. Kashani was originally licensed with a real estate broker license on August 9, 2006. Since January 1, 2014, Kashani has had an MLO license endorsement (NMLS number 244027.)

4. At all times mentioned below, respondents engaged in the business of real estate brokers in Orange County, California, conducting licensed activities within the meaning of Code section 10131, subdivisions (d) and (e), including selling or offering to sell promissory notes secured directly or collaterally by a lien on real property.

Trust Fund Audit

5. On September 30, 2016, the Department completed an audit examination of KSCI, covering the period from January 1, 2014 through December 31, 2016 (audit). The purpose of the audit was to determine whether respondents had handled and accounted for trust funds, and had conducted its mortgage loan activities, in accordance with the Real Estate Law and Regulations. The audit examination revealed violations of the Code and the Regulations.

Violations

6. Respondents failed to provide complete and accurate Mortgage Loan Disclosure Statements for three loan files funded by private investors (single lender), in violation of Code sections 10240, subdivision (a), and 10240.3 and Regulation sections 2840 and 2842. The Mortgage Loan Disclosure Statements failed to disclose the anticipated and current liens, or stated the wrong anticipated loan amount, on subject property located at 2170 Century Park E., #208, Los Angeles, CA 90067; 433 E. Walnut Ave., Rialto, CA 92376; and 26973 Del Gado, Dana Point, CA 92629.

7. The Mortgage Loan Disclosure Statement for a loan file funded by a financial institutional lender, Fremont Bank, was inaccurate because the current liens or anticipated loan amount were incorrect for the subject property, located at 125 34th St., Newport Beach, CA 92663, in violation of Code sections 10240, subdivision (a), and 10240.3 and Regulation sections 2840 and 2842.

8. Respondents charged an excess of points and fees in a covered loan for borrower B.W.,² in violation of Financial Code section 4979.6. KSCI originated this covered loan, which financed points and fees totaling \$4,290. This amount exceeded \$1,000, and was greater than six percent of the original principal balance, exclusive of points and fees. The excess fees charged to the borrower, totaling \$647.40, have not been refunded.

9. Respondents negotiated and made a higher-priced mortgage loan for consumer B.W.'s principal dwelling in which the annual percentage rate (APR) exceeded the average prime offer rate for a comparable transaction, in violation of Financial Code section 4995.2, subdivision (h)(2). The APR of the loan exceeded 3.5 or more percentage points for a loan secured by a second loan.

10. Respondents failed to obtain and retain a signed statement from lenders or investors stating that the lenders or investors met one or both of the qualifications of income or net worth as required, in violation of Code section 10232.3, subdivision (b). Respondents corrected this violation during the audit.

11. Kashani failed to exercise reasonable control and supervision over the activities conducted on behalf of KSCI as necessary to secure full compliance with the Real Estate Law, including, but not limited to, establishing policies, rules, procedures, and systems to review, oversee, and inspect the handling of trust funds, in violation of Code sections 10159.2 and 10177, subdivision (h), and Regulation section 2725.

Costs of Audit, Investigation and Enforcement

12. The audit addressed nine issues. Only five of the nine issues were the subject of this Accusation. In conducting its audit of respondents' licensed activities, the Department incurred costs totaling \$6,096.14. These costs are reasonable.

13. The Department submitted evidence of its costs of investigation (\$6,221.97) and enforcement (\$2,996.90), in the total amount of \$9,218.87. These costs are reasonable.

///

² Initials are used to protect the consumer's privacy.

Respondents' Evidence

14. Kashani testified candidly at the hearing. He has been the designated officer of KSCI since its inception. Neither respondent has any prior history of license discipline. Kashani is a private money broker, focusing entirely on business purpose loans. He asserted that he does not engage in any consumer lending, and it was Kashani's understanding that it is the purpose of the loan that determines whether it is a consumer loan.

15. Respondents do not solicit borrowers or lenders, "sell or offer to sell" any loans they own, negotiate loans, or collect payments. Respondents "arrange" loans for their clients, who are private investors. These private investors directly fund loans for borrowers seeking the funds for business purposes. The names of the private investors appear on each note and deed of trust.

16. Kashani brings the deal to the investor's attention, "vets" the risks, determines the borrower's ability to repay the loan, gives the investor his recommendation, arranges the loan documents, and sends it off to escrow.

17. People come to Kashani "by word of mouth." He explained that real estate agents in the community bring him "a deal" and he determines whether the deal makes sense for his client. Kashani "gives terms" to the real estate agent, and if the borrower accepts those terms, the loan is made. Respondents split the origination fee with the real estate agent who brings them the deal.

18. The Accusation alleges that KS Capital failed to complete Mortgage Loan Disclosure Statements correctly in three loan files. Kashani provided Mortgage Loan Disclosure Statements to each investor who made a loan, consisting of six pages with a good deal of data for a prospective investor to consider. Kashani did make errors in completing the top of page six of the forms, in that the form failed to disclose the anticipated and current liens and/or stated the wrong anticipated loan amount on the subject property. Kashani "works hard" to fill out all forms correctly. His failure to do so was an unintentional "oversight" which may have been due to the fact that Kashani completes the forms online. After he met with the auditor, Kashani corrected all errors on the Mortgage Loan Disclosure Statements. He now includes the proposed loan amount on the forms where it is required, and has corrected his practices going forward. He cooperated fully with the audit and made all books and records available to the auditor.

19. Respondents assert that Financial Code sections 4970 and 4999 are inapplicable to business purpose loans. Accordingly, they deny that they charged an excess of points and fees in a covered loan for Borrower B.W., or negotiated, or made, a higher-priced mortgage loan for her principal dwelling in which the APR exceeded the average prime rate offer for a comparable transaction. B.W., a singer and actor, obtained a \$65,000

second Trust Deed on her home to finance the publication of the second edition of a book she had authored about her experiences in Hollywood. Respondents were aware that the money to be borrowed was to be used by B.W. for business purposes, and complainant does not dispute this. Kashani was aware that the loan was secured by the borrower's principle dwelling.

20. The Financial Code provisions noted in the Accusation are part of the "California High Cost Law" (Financial Code section 4970 et seq.) Respondents contend that these provisions, as well as Financial Code section 4995 et seq., apply solely to "covered loans" meaning consumer loans secured by the consumer's principle dwelling. Financial Code section 18005 defines "consumer loan" as a loan made to an individual in which the money loaned "is primarily for personal, family, or household purposes." While B.W.'s loan was for a business purpose, it was secured by her principle dwelling. Accordingly, complainant's contention, that this transaction is governed by laws meant to shield consumers from losing their homes, is a reasonable interpretation of these laws, and her view must prevail.

21. Respondents contend that Business and Professions Code section 10232.3 does not apply to the broker-arranged loans at issue here because respondents "arrange" transactions between the parties, rather than "sell" notes respondents own. However, this is a distinction without a difference. Kashani contends that respondents were not required to obtain a signed statement from purchasers of the note to establish that the investment does not exceed 10 percent of their net worth or adjusted gross income. To respondents' credit, in an effort to comply with the auditors' requests, while the audit was still underway, Kashani did obtain, and provide to the auditors, signed forms from the investors, which established that they met these requirements. Additionally, prior to accepting any money, Kashani's practice is to obtain net worth statements from each investor on the Department's Form RE870.

22. Respondents admit that Kashani omitted a single data point out of 50 on one Mortgage Loan Disclosure Statement. On page 4 of the Mortgage Loan Disclosure Statement in question, Kashani failed to include the \$750,000 proposed loan in a box that asked for the amount of total liens on the property after the proposed loan was made for the subject property at 125 34th Street, Newport Beach, CA 92663. It was clear that Kashani's omission was an oversight, rather than an intent to deceive the borrower, in that all of the other documents and data points did reflect the \$750,000 loan correctly.

///

///

///

LEGAL CONCLUSIONS AND DISCUSSION

1. The real estate commissioner "has full power to regulate and control the issuance and revocation . . . of all licenses . . ." (Bus. & Prof. Code, § 10071.) "Protection of the public shall be the highest priority for the Department in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (Bus. & Prof. Code, § 10050.1.)

2. The standard of proof for the Department to prevail on an Accusation is clear and convincing evidence to a reasonable certainty. (*Borrer v. Dept. of Real Estate* (1971) 15 Cal.App.3d 531; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Complainant was obligated to adduce evidence that was clear, explicit, and unequivocal - so as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In Re Marriage of Weaver* (1990) 224 Cal.App.3d 278.)

3. Code section 10131, subdivision (d), provides that a real estate broker is a person who, for compensation, "[s]olicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity."

4. Code section 10131, subdivision (e), provides that a real estate broker is a person who, for compensation, "[s]ells or offers to sell . . . a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof."

5. Code section 10159.2, subdivision (a), provides that the officer designated by a corporate broker licensee is responsible for ensuring full compliance with statutes and regulations, on behalf of the corporation, in the performance of acts for which a real estate license is required.

6. Code section 10177 provides that the Real Estate Commissioner may suspend or revoke the license of a real estate licensee who has: (d) willfully disregarded or violated the Real Estate Law; (g) demonstrated negligence or incompetence in performing an act for which he is required to hold a license; or (h) as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

7. Various sources define or interpret negligence and incompetence. A professional is negligent if he or she fails to use that reasonable degree of skill, care, and

knowledge ordinarily possessed and exercised by members of the profession under similar circumstances, at or about the time of the incidents in question. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 997-998, 1001; *Alef v. Alta Bates Hospital* (1992) 5 Cal.App. 4th 208,215; see 6 B. Witkin, *Summary of California Law* (9th Ed.), *Torts*, sections 749, 750, and 774.)

8. The terms "negligent" and "incompetent" are not synonymous. (*Pollak v. Kinder* (1978) 85 Cal.App.3d 833, 838.) "[A] licensee may be competent or capable of performing a given duty but negligent in performing that duty." (Ibid.) While *Pollak* involved a single act of negligence by an insurance broker, as opposed to repeated negligent acts, and incompetence was not found, the Court made clear that incompetence may be found where a licensee demonstrates a "general lack of present ability to perform a given duty". (*Pollack, supra*, 85 Cal.App.3d at 837; see also *James v. Bd. of Dental Examiners* (1985) 172 Cal.App.3d 1096, at 1109: "Incompetence generally is defined as a lack of knowledge or ability in the discharging of professional obligations. Often, incompetency results from a correctable fault or defect.")

9. Cause exists to discipline respondents' licenses under Code section 10177, subdivision (g), for violations of Code sections 10159.2; 10177, subdivision (h); 10232.3, subdivision (b); 10240, subdivision (a); and 10240.3; Financial Code sections 4979.6 and 4995.2, subdivision (h)(2); and Regulation sections 2725, 2840, and 2842, in that the evidence presented established that respondents demonstrated negligence, but not incompetence, in performing an act for which a license is required. (Factual Findings 6-11.)

10. Cause does not exist to discipline respondents' licenses under Code section 10177, subdivision (d), in that the evidence presented was not sufficient to establish that respondents willfully disregarded, or willfully violated, Real Estate Law. As set forth in Factual Findings 6 through 11 and 14 through 22, respondents' violations were not willful. Some were due to mistake or negligence, while the remainder were based upon respondents' mistaken belief that the purpose of a loan determines whether or not it is governed by particular laws which provide heightened protections for consumer loans.

11. Cause does not exist to discipline respondent Kashani's license under Code section 10177, subdivision (h), in that the evidence presented was not sufficient to establish that he failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required. (Factual Findings 14-22.)

12. In issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d, 1016, 1030-1031.) The purpose of proceedings of this type is not to punish respondents. (*Hughes v. Board of*

Architectural Examiners (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.)

13. Prevention of predatory lending practices is a crucial goal of the Real Estate laws at issue in this Accusation. The evidence presented did not establish that respondents engaged in predatory lending. Respondents have no other criminal or disciplinary record. The evidence did not establish that Kashani exhibited any dishonesty in his interactions with the auditors, the Department, or consumers. He was candid and forthcoming in his hearing testimony. Respondents had a reasonable basis for the manner in which they conducted their broker activities and reasonably believed that they were in full compliance with real estate laws. All of these factors point to respondents' financial responsibility, character and general fitness as licensees. However, respondents did violate some statutory and regulatory provisions in carrying out their licensed activities and could have put a consumer's primary residence at risk. Considering all of the facts and circumstances presented, revocation of respondents' licenses would be unduly harsh and punitive and is not warranted. A stayed suspension and additional training shall be imposed to secure public protection.

14. Under Code section 10106, the Bureau may request an order for the licensee to pay the reasonable cost of investigation and enforcement of the case. As set forth in Factual Finding 13, the Department incurred reasonable costs of \$9,218.87. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal. App. 4th 32, 45, an agency must exercise its discretion to reduce or eliminate cost awards so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Board] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) An agency, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and must consider whether or not the licensee has raised a colorable defense. Given that respondents had a subjective good faith belief in the merits of their position, asserted a colorable defense, and prevailed on two out of three causes for discipline, the investigation and enforcement cost amount is reduced to \$3,000.

15. Under Code section 10148, subdivision (b), the Commissioner shall charge a real estate broker for the cost of any audit, if the Commissioner has found in a final decision following a disciplinary hearing that the broker has violated Code section 10145 or a regulation or rule of the Commissioner interpreting said section. This cost is \$6,096.14, as set forth in Factual Finding 12. The audit addressed nine issues. Only five of the nine issues were the subject of this Accusation. As a result, the audit cost will be reduced to \$4,000.

///

ORDER

1. All licenses and licensing rights of respondents KS Capital, Inc. and Babak Kashani under the Real Estate Law are suspended for a period of 90 days from the effective date of this decision; provided, however, that said suspension shall be stayed for one year upon the following terms and conditions:

A. Respondents shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

B. Respondent Kashani shall, as a condition of the stay order, submit proof satisfactory to the Commissioner of having taken and successfully completed a college-level course on "Mortgage Loan Brokering and Lending." Proof of satisfaction of this requirement includes evidence that respondent Kashani has successfully completed the course no later than 120 days following the effective date of the decision in this matter, or provided good cause to the Department for any inability to do so.

C. Within 30 days of the effective date of this decision, respondents shall refund to Borrower B.W. all excess points and fees paid in the amount of \$647.40.

C. Respondents shall pay the cost of investigation and enforcement of the case in the amount of \$3,000, on a schedule acceptable to the Department.

D. Respondents shall pay \$4,000 for the audit which led to this disciplinary action, on a schedule acceptable to the Department.

2. The Commissioner may, in his discretion, vacate and set aside the stay order if respondents fail to comply with any provisions of this Order. The vacation and the set aside of the stay shall remain in effect until respondents comply with the Order or enter into an agreement satisfactory to the Commissioner.

3. Should no order vacating the stay be issued within one year of the effective date of this decision, the stay imposed herein shall become permanent.

DATED: March 14, 2019

DocuSigned by:
Laurie Pearlman
LAURIE PEARLMAN
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT C

1 Dennis H. Doss, Bar No. 81839
DOSS LAW
2 29042 Bouquet Canyon Road
Silverado, CA 92676
3 Tel.: (949) 214-4399
Fax: (949) 435-3737
4 E-mail: dennis@dosslaw.com

5 Attorneys for Respondents

6
7
8 **BEFORE THE BUREAU OF REAL ESTATE**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation of

11 KS CAPITAL, INC. and) Case No. H-41033 LA
12 BABAK KASHANI,) OAH Case No. 2018080260
13 individually and as designated officer of)
KS Capital, Inc.) **RESPONDENTS' MOTION FOR**
14 Respondents.) **RECONSIDERATION**
15)
16)

17 Respondents respectfully move for reconsideration of the March 14, 2019 Decision by
18 the Administrative Law Judge of the Office of Administrative Hearings to correct three errors
19 in the Decision:

20 **A. Paragraph 18 on Page 4 of the Decision Should be Stricken.** In the second
21 paragraph of the Decision on page 1 the Court correctly noted that DRE attorney, Ms. Lee,
22 orally asked the Court to delete the paragraphs of the Accusation dealing with the
23 Lender/Purchaser Disclosure Statements. The Court granted that request (“on page 3, lines
24 25 to 26 and page 4, lines 1-6 were deleted”) without objection by the respondents.
25 Therefore, paragraph 18 on page 4 of the Decision should be deleted because it deals with
26 the portion of the Accusation that was deleted by the Court (e.g., “consisting of a good deal of
27 data for a prospective investor to consider”).
28

EXHIBIT "C"

1 B. **Kashani Should be Exempted from the Order.** The undisputed facts were
2 that all of the subject loans were brokered by respondent KS Capital, Inc., a corporate
3 licensee. The Department produced no evidence that Kashani acted in an individual capacity.
4 He was named in the Accusation for failure to supervise the licensee. However, the Court
5 found in paragraph 11 on page 7:

6 *“Cause does not exist to discipline respondent Kashani’s license under Code*
7 *section 10177, subdivision (h), in that the evidence presented was not sufficient*
8 *to establish he failed to exercise reasonable supervision and control of the*
9 *activities of the corporation for which a real estate license is required.”*

10 Since Kashani was found not guilty of failing to supervise licensee KS Capital, Inc., he should
11 not be subject to discipline and this should be reflected in the Order.

12 C. **The Continuing Education Paragraph Presents an Impossible**
13 **Requirement.** In Paragraph B of the Order on last page, the Court says:

14 *“Respondent Kashani shall, as a condition of the stay order, submit proof,*
15 *satisfactory to the Commissioner of having taken and successfully completed a*
16 *college-level course on “Mortgage Loan Brokering and Lending.” Proof of*
17 *satisfaction of this requirement includes evidence that respondent Kashani has*
18 *successfully completed the course no later than 120 days following the effective*
19 *date of the decision in this matter, or provided good cause to the Department for*
20 *any inability to do so.” (emphasis added).*

21 If Kashani is subject to discipline by the Decision and Order, this paragraph should be
22 replaced by the typical DRE educational requirement:

23 *“Respondent Kashani shall within 120 days from the effective date of the*
24 *Decision and Order herein submit proof satisfactory to the Commissioner of*
25 *having taken and successfully completed the continuing education course*
26
27
28

1 *specified in paragraph (1)¹ of Section 10170.5 of the Business and Professions*
2 *Code. If respondent Kashani fails to satisfy this condition, Kasani's real estate*
3 *license shall be automatically suspended until Kashani presents evidence*
4 *satisfactory to the Commissioner of having taken and successfully completed the*
5 *course. Proof of completion of the continuing education course must be*
6 *delivered to the Department of Real Estate, Flag Section, P.O. Box 137013,*
7 *Sacramento, Ca 95813-7013."*

8 The reasons for this requested charge are: (a) no local college or university offers the
9 "college level class in mortgage brokering and lending" specified in the Decision, (b) even if
10 he could find a class that was close in content, there is insufficient time for Kashani to enroll
11 in college and complete a course at a local college within 120 days and (c) it is uncertain
12 what a college level class consists of. Most colleges are in the final stages of finishing their
13 Spring quarters and semesters and the number of summer classes available, even if were not
14 too late to register for them, makes compliance with the Decision impossible. The proposed
15 change conforms to the usual requirement of the Commissioner in these matters and
16 respondents believe this is what the Court intended.

17 Respectfully submitted,

18 Dated: May 3, 2019

Doss Law, LLP

20 By: _____
21 Dennis H. Doss

26 _____
27 ¹ "A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include,
28 but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises,
and information of current interest."

1
2 **DECLARATION OF SERVICE**

3 **Case Name: KS Capital, Inc. OAH No.: 2018080260**

4 I, Dennis H. Doss, declare as follows: I am over 18 years of age and am not a party to this
5 action. I am employed by Doss Law, LLP, 29042 Bouquet Canyon Road, Silverado, CA 92676.

6 On May 3, 2019, I served a copy of the following document(s) in the action entitled above:

7
8 **Motion for Reconsideration**

9 to each of the person(s) named below at the addresses listed after each name by the
10 following method(s):

11 Ms. Diane Lee
12 Department of Real Estate
13 320 W. Fourth Street, Suite 350
14 Los Angeles, CA 90013

15 Office of Administrative Hearings
16 320 W. Fourth Street, Suite 630
17 Los Angeles, CA 90013

18 **United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed
19 to the person(s) at the address(es) listed above, and deposited the same in United States
20 Postal Service in a sealed envelope or package with postage fully prepaid.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct. This declaration was executed at Silverado, California on May 3, 2019.

23
24 

25
26
27
28
Dennis H. Doss

FILED

MAY 24 2019

DEPT. OF REAL ESTATE

By 

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
27

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
KS CAPITAL, INC. and BABAK)
KASHANI, individually and as)
designated officer of KS Capital, Inc,)
)
Respondents.)

NO. H-41033 LA

ORDER GRANTING RECONSIDERATION

On April 22, 2019, a Decision was rendered in the above-entitled matter. The Decision was to become effective on May 15, 2019 and was stayed by separate Order to May 25, 2019.

On May 3, 2019, Respondent petitioned for reconsideration of the Decision of April 22, 2019.

I find that there is good cause to reconsider the Decision of April 22, 2019, for the limited purpose of amending Paragraph 1(b) of the Order. Paragraph 1(B) is hereby amended to state the following:

“ Respondent Kashani shall, as a condition of the stay order, submit proof satisfactory to the Commissioner of having taken and successfully completed a college-level course on ‘Mortgage Loan Brokering and Lending.’ Proof of satisfaction of this requirement includes evidence that respondent Kashani has successfully completed the course no later than **one year** following the effective date of the decision in this matter, or provided good cause to the Department for any inability to do so.”


///

///

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
27

All of the other Factual Findings, Legal Conclusions and Order in the Proposed Decision of March 14, 2019 are hereby adopted as my Decision in the above-titled matter.

IT IS SO ORDERED MAY 24, 2019.


Daniel J. Sandri
Acting Real Estate Commissioner

DECLARATION OF MAILING

**State of California
Department of Real Estate**

In the Matter of the Accusation of:

KS CAPITAL, INC. , et al.

H-41033 LA

2018080260

State of California, County of Los Angeles

I am a citizen of the United States, over the age of eighteen years, and not a party to the within action; I am employed in the office of the Department of Real Estate of the State of California at 320 West Fourth St., Ste. 350 Los Angeles, CA 90013.

On May 24, 2019, I served the following documents:

ORDER GRANTING RECONSIDERATION

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

KS CAPITAL, INC.
BABAK KASHANI
16520 BAKE PKWY STE. 105
IRVINE, CA 92618

DENNIS H. DOSS, ESQ.
29042 BOUQUET CANYON ROAD
SILVERADO, CA 92676

(BY REGULAR MAIL & CERTIFIED MAIL)

**Respondents' Attorney - BY
REGULAR MAIL**

(By Mail) I served the above document(s) on behalf of the Department of Real Estate by placing for collection and mailing following ordinary business practices, true copies to the addressed as shown above, on this date and at the place shown, in envelope(s) in the ordinary course of business.

(By Certified Mail) I served the above document(s) on behalf of the Department of Real Estate by placing for collection and mailing following ordinary business practices, true copies to the addressed as shown above, on this date and at the place shown, in envelope(s) in the ordinary course of business.

(By Electronic Service) I caused the above document(s) to be transmitted electronically, on behalf of the Department of Real Estate, to the person(s) at the e-mail addresses listed, above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 24, 2019, at Los Angeles, California.



AGNES NG