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FILED
AUG 0 6 2002

DEPARTMENT OF REAL ESTATE:

By Jean Aronow

BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
SEAN ANTHONY CLINNIN,) NO. H-2520 SD
Respondent.)

ORDER GRANTING REINSTATEMENT OF LICENSE

On December 20, 1999, an Order was rendered herein revoking the real estate salesperson license of Respondent, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on January 20, 2000, and Respondent has operated as a restricted licensee without cause for disciplinary action against Respondent.

On March 23, 2001, Respondent petitioned for reinstatement of said real estate salesperson license, and the Attorney General of the State of California has been given notice of the filing of said petition.

1 I have considered the petition of Respondent and the
2 evidence and arguments in support thereof including Respondent's
3 record as a restricted licensee. Respondent has demonstrated to
4 my satisfaction that Respondent meets the requirements of law for
5 the issuance to Respondent of an unrestricted real estate
6 salesperson license and that it would not be against the public
7 interest to issue said license to Respondent.

8 NOW, THEREFORE, IT IS ORDERED that Respondent's
9 petition for reinstatement is granted and that a real estate
10 salesperson license be issued to Respondent if Respondent
11 satisfies the following conditions within nine months from the
12 date of this Order:

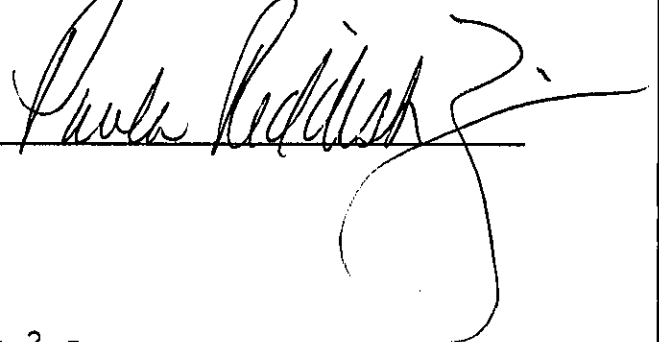
13 1. Submittal of a completed application and payment of
14 the fee for a real estate salesperson license.

15 2. Submittal of evidence of having, since the most
16 recent issuance of an original or renewal real estate license,
17 taken and successfully completed the continuing education
18 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
19 for renewal of a real estate license.

20 This Order shall be effective immediately.

21 DATED: July 29, 2002.

22
23 PAULA REDDISH ZINNEMANN
24 Real Estate Commissioner

25 
26
27

1 my satisfaction that Respondent meets the requirements of law for
2 the issuance to Respondent of an unrestricted real estate broker
3 license and that it would not be against the public interest to
4 issue said license to Respondent.

5 NOW, THEREFORE, IT IS ORDERED that Respondent's
6 petition for reinstatement is granted and that a real estate
7 broker license be issued to Respondent, if Respondent satisfies
8 the following conditions within nine months from the date of this
9 Order:

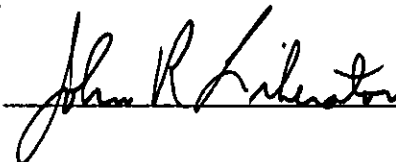
10 1. Submittal of a completed application and payment of
11 the fee for a real estate broker license.

12 2. Submittal of evidence of having, since the most
13 recent issuance of an original or renewal real estate license,
14 taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
16 for renewal of a real estate license.

17 This Order shall be effective immediately.

18 DATED: February 8, 2002
19

20 PAULA REDDISH ZINNEMANN
21 Real Estate Commissioner

22
23 
24

25 BY: John R. Liberator
26 Chief Deputy Commissioner
27

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
DEC 30 1999

DEPARTMENT OF REAL ESTATE

Maurice A. Zair

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) DRE No. H-2520 SD
12 RICK D. METCALF and) OAH No. L-1999090091
13 SEAN ANTHONY CLINNIN,)
14 Respondents.) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between Respondent SEAN
16 ANTHONY CLINNIN, (hereinafter "CLINNIN"), individually and by and
17 through Lawrence H. Lackman, Esq., attorney of record herein for
18 Respondent CLINNIN, and the Complainant, acting by and through
19 James L. Beaver, Counsel for the Department of Real Estate, as
20 follows for the purpose of settling and disposing of the
21 Accusation filed on August 11, 1999 in this matter (hereinafter
22 "the Accusation"):

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondent
25 at a formal hearing on the Accusation, which hearing was to be
26 held in accordance with the provisions of the Administrative
27 Procedure Act (APA), shall instead and in place thereof be
submitted solely on the basis of the provisions of this

No. H-2520 SD

SEAN ANTHONY CLINNIN

1 Stipulation and Agreement.

2 2. Respondent has received, read and understands the
3 Statement to Respondent, the Discovery Provisions of the APA and
4 the Accusation filed by the Department of Real Estate in this
5 proceeding.

6 3. On August 24, 1999; Respondent filed a Notice of
7 Defense pursuant to Section 11505 of the Government Code for the
8 purpose of requesting a hearing on the allegations in the
9 Accusation. Respondent hereby freely and voluntarily withdraws
10 said Notice of Defense. Respondent acknowledges that Respondent
11 understand that by withdrawing said Notice of Defense Respondent
12 will thereby waive Respondent's right to require the Commissioner
13 to prove the allegations in the Accusation at a contested hearing
14 held in accordance with the provisions of the APA and that
15 Respondent will waive other rights afforded to Respondent in
16 connection with the hearing such as the right to present evidence
17 in defense of the allegations in the Accusation and the right to
18 cross-examine witnesses.

19 4. Respondent, pursuant to the limitations set forth
20 below, solely for the purposes of this stipulation, hereby admits
21 that the factual allegations pertaining to Respondent in the
22 Accusation are true and correct and agrees that the Real Estate
23 Commissioner shall not be required to provide further evidence of
24 such allegations.

25 5. It is understood by the parties that the Real
26 Estate Commissioner may adopt the Stipulation and Agreement as her
27 decision in this matter, thereby imposing the penalty and
sanctions on Respondent's real estate license and license rights



1 ANTHONY CLINNIN under the Real Estate Law are revoked; provided,
2 however, a restricted real estate salesperson license shall be
3 issued to said Respondent pursuant to Section 10156.5 of the
4 Business and Professions Code if Respondent makes application
5 therefor and pays to the Department of Real Estate the appropriate
6 fee for the restricted license within 90 days from the effective
7 date of this Decision. The restricted license issued to Respondent
8 shall be subject to all of the provisions of Section 10156.7 of the
9 Business and Professions Code and to the following limitations,
10 conditions and restrictions imposed under authority of Section
11 10156.6 of that Code:

12 1. Any restricted real estate license issued to
13 Respondent pursuant to this Decision shall be suspended for a period
14 of thirty (30) days from the date of issuance of said restricted
15 license; provided however, that if Respondent petitions, said
16 suspension (or a portion thereof) shall be stayed upon condition
17 that Respondent pays a monetary penalty pursuant to Section 10175.2
18 of the Code at the rate of \$200.00 for each day of the suspension for
19 a total monetary penalty of \$6,000.00, and upon condition that no
20 further cause for disciplinary action against the real estate
21 license of Respondent occurs within one year from the effective date
22 of the Decision in this matter. Any stay granted pursuant to this
23 paragraph shall be subject to the following terms:

24 (a) Said monetary penalty payment shall be in the form
25 of a cashier's check or certified check made payable to the Recovery
26 Account of the Real Estate Fund. Said check must be delivered to the
27 Department prior to the effective date of the Decision in this
matter.

1 **(b) The Commissioner may, if a final subsequent**
2 determination is made, after hearing or upon stipulation, that cause
3 for disciplinary action occurred during the one (1) year period
4 following the effective date of the Decision in this matter, vacate
5 and set aside the stay and order the immediate execution of all or
6 any part of the stayed suspension, in which event the Respondent
7 shall not be entitled to any repayment nor credit, prorated or
8 otherwise, for money paid to the Department under the terms of this
9 Order.

10 **(c) If Respondent fails to pay the monetary penalty in**
11 accordance with the terms and conditions of the Decision, the
12 Commissioner may, without a hearing, order the immediate execution
13 of all or any part of the stayed suspension in which event the
14 Respondent shall not be entitled to any repayment nor credit,
15 prorated or otherwise, for money paid to the Department under the
16 terms of the Decision.

17 **(d) If Respondent pays the monetary penalty and if no**
18 order vacating the stay is made pursuant to Paragraph (b), above,
19 the stay granted pursuant to this Decision shall become permanent.

20 **2. The restricted license issued to Respondent may be**
21 suspended prior to hearing by Order of the Real Estate Commissioner
22 in the event of Respondent's conviction or plea of nolo contendere
23 to a crime which is substantially related to Respondent's fitness or
24 capacity as a real estate licensee.

25 **3. The restricted license issued to Respondent may be**
26 suspended prior to hearing by Order of the Real Estate Commissioner
27 on evidence satisfactory to the Commissioner that Respondent has
violated provisions of the California Real Estate Law, the

1 Subdivided Lands Law, Regulations of the Real Estate Commissioner or
2 conditions attaching to the restricted license.

3 4. Respondent shall not be eligible to apply for the
4 issuance of an unrestricted real estate license nor for the
5 removal of any of the conditions, limitations or restrictions of a
6 restricted license until one (1) year has elapsed from the
7 effective date of this Decision.

8 5. Respondent shall, within nine months from the
9 effective date of the Decision, present evidence satisfactory to
10 the Real Estate Commissioner that Respondent has, since the most
11 recent issuance of an original or renewal real estate license,
12 taken and successfully completed the continuing education
13 requirements of Article 2.5 of Chapter 3 of the Real Estate Law
14 for renewal of a real estate license. If Respondent fails to
15 satisfy this condition, the Commissioner may order the suspension
16 of the restricted license until the Respondent presents such
17 evidence. The Commissioner shall afford Respondent the
18 opportunity for a hearing pursuant to the Administrative Procedure
19 Act to present such evidence.

20 6. Respondent shall, within six (6) months from the
21 issuance of the restricted license, take and pass the Professional
22 Responsibility Examination administered by the Department
23 including the payment of the appropriate examination fee. If
24 Respondent fails to satisfy this condition, the Commissioner may
25 order the suspension of the restricted license until Respondent
26 passes the examination.

27 7. Respondent shall submit with any application for
license under an employing broker, or any application for transfer

1 to a new employing broker, a statement signed by the prospective
2 employing real estate broker on a form approved by the Department
3 of Real Estate which shall certify:

4 (a) That the employing broker has read the Decision of
5 the Commissioner which granted the right to a restricted
6 license; and

7 (b) That the employing broker will exercise close
8 supervision over the performance by the restricted
9 licensee relating to activities for which a real estate
10 license is required.

11 8. Any restricted real estate broker license issued to
12 Respondent may be suspended or revoked for a violation by
13 Respondent of any of the conditions attaching to the restricted
14 license.

15 11-23-99

DATED


16 JAMES L. BEAVER, Counsel
Department of Real Estate

17 * * *

18 I have read the Stipulation and Agreement and have
19 discussed its terms with my attorney and its terms are understood
20 by me and are agreeable and acceptable to me. I understand that I
21 am waiving rights given to me by the California Administrative
22 Procedure Act (including but not limited to Sections 11506,
23 11508, 11509, and 11513 of the Government Code), and I willingly,
24 intelligently, and voluntarily waive those rights, including the
25 right of requiring the Commissioner to prove the allegations in
26 the Accusation at a hearing at which I would have the right to
27 cross-examine witnesses against me and to present evidence in
defense and mitigation of the charges.

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11/23/99
DATED

Sean A Clinnin
SEAN ANTHONY CLINNIN
Respondent

* * *

I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

11-23-99
DATED

L. H. Lackman
LAWRENCE H. LACKMAN
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted by as my Decision in this matter and shall become effective at 12 o'clock noon on January 20, 2000.

IT IS SO ORDERED December 20, 1999.

Real Estate Commissioner
Paula Redden

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
DEC 30 1999

DEPARTMENT OF REAL ESTATE

Laurie G. Zian

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) DRE No. H-2520 SD
12 RICK D. METCALF and)
13 SEAN ANTHONY CLINNIN,) OAH No. L-1999090091
14 Respondents.) STIPULATION AND AGREEMENT

15 It is hereby stipulated by and between Respondent RICK
16 D. METCALF (hereinafter "METCALF"), individually and by and
17 through Herman Thordsen, Esq., attorney of record herein for
18 Respondent METCALF, and the Complainant, acting by and through
19 James L. Beaver, Counsel for the Department of Real Estate, as
20 follows for the purpose of settling and disposing of the
21 Accusation filed on August 11, 1999 in this matter (hereinafter
22 "the Accusation"):

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondent
25 at a formal hearing on the Accusation, which hearing was to be
26 held in accordance with the provisions of the Administrative
27 Procedure Act (APA), shall instead and in place thereof be
submitted solely on the basis of the provisions of this

No. H-2520 SD

RICK D. METCALF

1 Stipulation and Agreement.

2 2. Respondent has received, read and understands the
3 Statement to Respondent, the Discovery Provisions of the APA and
4 the Accusation filed by the Department of Real Estate in this
5 proceeding.

6 3. On September 1, 1999, Respondent filed a Notice of
7 Defense pursuant to Section 11505 of the Government Code for the
8 purpose of requesting a hearing on the allegations in the
9 Accusation. Respondent hereby freely and voluntarily withdraws
10 said Notice of Defense. Respondent acknowledges that Respondent
11 understand that by withdrawing said Notice of Defense Respondent
12 will thereby waive Respondent's right to require the Commissioner
13 to prove the allegations in the Accusation at a contested hearing
14 held in accordance with the provisions of the APA and that
15 Respondent will waive other rights afforded to Respondent in
16 connection with the hearing such as the right to present evidence
17 in defense of the allegations in the Accusation and the right to
18 cross-examine witnesses.

19 4. Respondent, pursuant to the limitations set forth
20 below, solely for the purposes of this stipulation, hereby admits
21 that the factual allegations pertaining to Respondent in the
22 Accusation are true and correct and agrees that the Real Estate
23 Commissioner shall not be required to provide further evidence of
24 such allegations.

25 5. It is understood by the parties that the Real
26 Estate Commissioner may adopt the Stipulation and Agreement as her
27 decision in this matter, thereby imposing the penalty and
sanctions on Respondent's real estate license and license rights

No. H-2520 SD

'RICK D. METCALF

1 as set forth in the "Order" below. In the event that the
2 Commissioner in her discretion does not adopt the Stipulation and
3 Agreement, it shall be void and of no effect, and Respondent shall
4 retain the right to a hearing and proceeding on the Accusation
5 under all the provisions of the APA and shall not be bound by any
6 admission or waiver made herein.

7 6. Except for any cause for Accusation under Sections
8 10139.5, 10177(g), or 10177(h) of the Code arising out of the
9 employment by Respondent METCALF of Sean Anthony Clinin between
10 March 29, 1997 and June 23, 1998, the Order or any subsequent
11 Order of the Real Estate Commissioner made pursuant to this
12 Stipulation and Agreement shall not constitute an estoppel, merger
13 or bar to any further administrative or civil proceedings by the
14 Department of Real Estate with respect to any matters which were
15 not specifically alleged to be causes for accusation in this
16 proceeding.

17 7. Respondent understand that by agreeing to this
18 Stipulation and Agreement, the findings set forth below in the
19 Determination Of Issues become final, and that the Commissioner
20 may charge said Respondent for the costs of any audit conducted
21 pursuant to Section 10148 of the Business and Professions Code to
22 determine if the violations have been corrected. The maximum costs
23 of said audit shall not exceed \$3,000.00.

24 DETERMINATION OF ISSUES

25 By reason of the foregoing stipulations, admissions and
26 waivers and solely for the purpose of settlement of the pending
27 Accusation without hearing, it is stipulated and agreed that the
following Determination of Issues shall be made:

No. H-2520 SD

RICK D. METCALF

The acts and omissions of Respondent as described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of Respondent under the following provisions of the California Business and Professions Code (hereinafter "the Code"):

(a) As to Paragraphs VI and VII, under Section 10137 of the Code in conjunction with Section 10177(d) of the Code;

(b) as to Paragraph XIII(a), under Section 2832 of the Regulations in conjunction with Sections 10145 and 10177(d) of the Code;

(c) as to Paragraph XIII(b), under Section 2834(a) of the Regulations in conjunction with Sections 10145 and 10177(d) of the Code; and

(d) as to Paragraph XIV, under Section 2731(a) of the Regulations in conjunction with Sections 10159.5 and 10177(d) of the Code.

ORDER

All licenses and licensing rights of Respondent RICK D. METCALF under the Real Estate Law are revoked; provided, however, a restricted real estate broker license shall be issued to said Respondent pursuant to Section 10156.5 of the Business and Professions Code if Respondent makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted license issued to Respondent shall be subject to all of the provisions of Section 10156.7 of the Business

1 and Professions Code and to the following limitations, conditions
2 and restrictions imposed under authority of Section 10156.6 of that
3 Code:

4 1. Any restricted real estate license issued to
5 Respondent pursuant to this Decision shall be suspended for a period
6 of thirty (30) days from the date of issuance of said restricted
7 license; provided however, that if Respondent petitions, said
8 suspension (or a portion thereof) shall be stayed upon condition
9 that Respondent pays a monetary penalty pursuant to Section 10175.2
10 of the Code at the rate of \$200.00 for each day of the suspension for
11 a total monetary penalty of \$6,000.00, and upon condition that no
12 further cause for disciplinary action against the real estate
13 license of Respondent occurs within one year from the effective date
14 of the Decision in this matter. Any stay granted pursuant to this
15 paragraph shall be subject to the following terms:

16 (a) Said monetary penalty payment shall be in the form
17 of a cashier's check or certified check made payable to the Recovery
18 Account of the Real Estate Fund. Said check must be delivered to the
19 Department prior to the effective date of the Decision in this
20 matter.

21 (b) The Commissioner may, if a final subsequent
22 determination is made, after hearing or upon stipulation, that cause
23 for disciplinary action occurred during the one (1) year period
24 following the effective date of the Decision in this matter, vacate
25 and set aside the stay and order the immediate execution of all or
26 any part of the stayed suspension, in which event the Respondent
27 shall not be entitled to any repayment nor credit, prorated or
otherwise, for money paid to the Department under the terms of this

No. H-2520 SD

RICK D. METCALF

1 Order.

2 (c) If Respondent fails to pay the monetary penalty in
3 accordance with the terms and conditions of the Decision, the
4 Commissioner may, without a hearing, order the immediate execution
5 of all or any part of the stayed suspension in which event the
6 Respondent shall not be entitled to ~~any repayment nor credit,~~
7 prorated or otherwise, for money paid to the Department under the
8 terms of the Decision.

9 (d) If Respondent pays the monetary penalty and if no
10 order vacating the stay is made pursuant to Paragraph (b), above,
11 the stay granted pursuant to this Decision shall become permanent.

12 2. The restricted license issued to Respondent may be
13 suspended prior to hearing by Order of the Real Estate Commissioner
14 in the event of Respondent's conviction or plea of nolo contendere
15 to a crime which is substantially related to Respondent's fitness or
16 capacity as a real estate licensee.

17 3. The restricted license issued to Respondent may be
18 suspended prior to hearing by Order of the Real Estate Commissioner
19 on evidence satisfactory to the Commissioner that Respondent has
20 violated provisions of the California Real Estate Law, the
21 Subdivided Lands Law, Regulations of the Real Estate Commissioner or
22 conditions attaching to the restricted license.

23 4. Respondent shall not be eligible to apply for the
24 issuance of an unrestricted real estate license nor for the
25 removal of any of the conditions, limitations or restrictions of a
26 restricted license until one (1) year has elapsed from the
27 effective date of this Decision.

1 5. Respondent shall, within six (6) months from the
2 issuance of the restricted license, take and pass the Professional
3 Responsibility Examination administered by the Department
4 including the payment of the appropriate examination fee. If
5 Respondent fails to satisfy this condition, the Commissioner may
6 order the suspension of the restricted license until Respondent
7 passes the examination.

8 6. Pursuant to Section 10148 of the Business and
9 Professions Code, Respondent shall pay the Commissioner's
10 reasonable cost for an audit to determine if Respondent has
11 corrected the trust fund violation(s) found in paragraph I of the
12 Determination of Issues. In calculating the amount of the
13 Commissioner's reasonable cost, the Commissioner may use the
14 estimated average hourly salary for all persons performing audits
15 of real estate brokers, and shall include an allocation for travel
16 time to and from the auditor's place of work. Respondent shall
17 pay such cost within 45 days of receiving an invoice from the
18 Commissioner detailing the activities performed during the audit
19 and the amount of time spent performing those activities. The
20 Commissioner may suspend the restricted license issued to
21 respondent pending a hearing held in accordance with Section
22 11500, et seq., of the Government Code, if payment is not timely
23 made as provided for herein, or as provided for in a subsequent
24 agreement between the Respondent and the Commissioner. The
25 suspension shall remain in effect until payment is made in full or
26 until Respondent enters into an agreement satisfactory to the
27 Commissioner to provide for payment, or until a decision providing
otherwise is adopted following a hearing held pursuant to this

1 condition.

2 7. Any restricted real estate broker license issued to
3 Respondent may be suspended or revoked for a violation by
4 Respondent of any of the conditions attaching to the restricted
5 license.

6 11-23-99

DATED

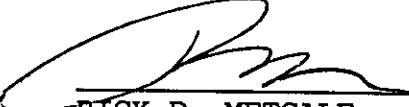

JAMES L. BEAVER, Counsel
Department of Real Estate

* * *

9 I have read the Stipulation and Agreement and have
10 discussed its terms with my attorney and its terms are understood
11 by me and are agreeable and acceptable to me. I understand that I
12 am waiving rights given to me by the California Administrative
13 Procedure Act (including but not limited to Sections 11506,
14 11508, 11509, and 11513 of the Government Code), and I willingly,
15 intelligently, and voluntarily waive those rights, including the
16 right of requiring the Commissioner to prove the allegations in
17 the Accusation at a hearing at which I would have the right to
18 cross-examine witnesses against me and to present evidence in
19 defense and mitigation of the charges.

20 11/23/99

DATED

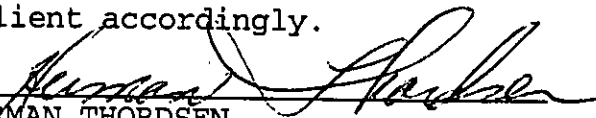

RICK D. METCALF
Respondent

* * *

24 I have reviewed the Stipulation and Agreement as to form
25 and content and have advised my client accordingly.

26 11-23-99

DATED


HERMAN THORSEN
Attorney for Respondent

* * *

27 No. H-2520 SD

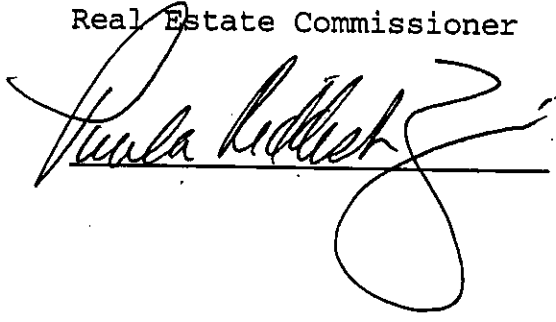
RICK D. METCALF

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The foregoing Stipulation and Agreement is hereby
adopted by as my Decision in this matter and shall become
effective at 12 o'clock noon on January 20, 2000.

IT IS SO ORDERED December 20, 1999.

Real Estate Commissioner



FILED

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

OCT - 7 1999

DEPARTMENT OF REAL ESTATE

Laurie A. Zan

In the Matter of the Accusation of

RICK D. METCALF and
SEAN ANTHONY CLINNIN,

}

Case No. H-2520 SD

OAH No. L-1999090091

Respondent

FIRST AMENDED
NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 1350 Front Street, Room 6022,
San Diego, CA 92101

on January 24 - 27, 2000 (4 Days), at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: October 7, 1999

DEPARTMENT OF REAL ESTATE
James L. Beaver
BY JAMES L. BEAVER Counsel

FILED

BEFORE THE DEPARTMENT OF REAL ESTATE OCT - 1 1999
STATE OF CALIFORNIA

DEPARTMENT OF REAL ESTATE

By Laurie A. Zain

In the Matter of the Accusation of

RICK D. METCALF and
SEAN ANTHONY CLINNIN,

}

Case No. H-2520 SD

OAH No. L-1999090091

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at the
Office of Administrative Hearings, 1350 Front Street, Room 6022,
San Diego, CA 92101

on January 24 - 27, 2000 (4 Days) at the hour of 10:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of
hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten
(10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days
will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You
are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent
yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the
Department may take disciplinary action against you based upon any express admission or other evidence including
affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses
testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the
production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who
does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The
interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: September 30, 1999

By James L. Beaver
JAMES L. BEAVER Counsel

1 JAMES L. BEAVER, Counsel (SBN 60543)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 -or- (916) 227-0788 (Direct)

FILED
AUG 11 1999

DEPARTMENT OF REAL ESTATE

By Juan Camacho

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of) No. H-2520 SD
12 RICK D. METCALF and)
13 SEAN ANTHONY CLINNIN,) ACCUSATION
14 Respondents.)

15 The Complainant, J. Chris Graves, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against RICK D. METCALF and SEAN ANTHONY CLINNIN (hereinafter
18 "Respondents"), is informed and alleges as follows:

I

19
20 Respondents are presently licensed and/or have license
21 rights under the Real Estate Law, Part 1 of Division 4 of the
22 Business and Professions Code (hereinafter "Code").

II

23
24 The Complainant, J. Chris Graves, a Deputy Real Estate
25 Commissioner of the State of California, makes this Accusation
26 against Respondents in his official capacity.

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1 III

2 At all times herein mentioned, Respondent RICK D.
3 METCALF (hereinafter "METCALF") was and now is licensed by the
4 Department of Real Estate of the State of California (hereinafter
5 "the Department") as a real estate broker.

6 IV

7 On March 28, 1997, the real estate salesperson license
8 of Respondent SEAN ANTHONY CLINNIN (hereinafter "CLINNIN") expired
9 and was not renewed until June 24, 1998. At no time herein
10 mentioned from March 29, 1997 through June 23, 1998 was Respondent
11 CLINNIN licensed by the Department as either a real estate broker
12 or as a real estate salesperson. At all times herein mentioned
13 from and after June 24, 1998, Respondent CLINNIN was and now is
14 licensed by the Department as a real estate salesperson.

15 V

16 At all times herein mentioned, Respondents engaged in
17 the business of, acted in the capacity of, advertised and assumed
18 to act as real estate brokers in the State of California within
19 the meaning of Section 10131(d) of the Code, including the
20 operation and conduct of a mortgage loan brokerage business with
21 the public wherein, on behalf of others, for compensation or in
22 expectation of compensation, Respondents solicited lenders and
23 borrowers for loans secured directly or collaterally by liens on
24 real property, and wherein Respondents arranged, negotiated,
25 processed and consummated such loans, and in addition conducted
26 the escrows through which Respondents consummated such loans.

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VI

At all times mentioned herein from March 29, 1997 through June 23, 1998, Respondent METCALF employed Respondent CLINNIN to perform the acts and conduct the activities described in Paragraph V, above, and compensated Respondent CLINNIN for such activities and employment.

VII

Between March 29, 1997 and June 23, 1998, in the course of the activities and employment described in Paragraphs V and VI, above, in approximately forty-six (46) separate transactions, Respondent CLINNIN solicited and obtained applications from prospective borrowers for loans secured by deeds of trust encumbering real property within the State of California, and thereafter Respondent METCALF compensated Respondent CLINNIN for such activities and employment.

VIII

On or about June 9, 1998, in the course of the activities and employment described in Paragraphs V and VI, above, Respondent CLINNIN solicited and obtained an offer by Doug and Teresa Hall to purchase real property at 4972 Mt. Frissell, San Diego, California, owned by William and Donna Winchester.

IX

In acting as described in Paragraphs VI and VII, above, Respondent METCALF violated Section 10137 of the Code.

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1 X

2 In acting as described in Paragraphs VI through VIII,
3 above, Respondent CLINNIN violated Section 10130 of the Code.

4 XI

5 In the course of the mortgage loan brokerage and escrow
6 activities described in Paragraph V, above, Respondent METCALF
7 accepted or received funds in trust (hereinafter "trust funds")
8 from or on behalf of borrowers and lenders and others and
9 thereafter from time to time made disbursements of said funds.

10 XII

11 Some but not necessarily all of said trust funds
12 accepted or received by Respondent METCALF were deposited or
13 caused to be deposited by Respondent METCALF into one or more bank
14 accounts (hereinafter "trust fund accounts") maintained by
15 Respondent METCALF for the handling of trust funds, including but
16 not necessarily limited to the "Ocean Escrow" account, Account
17 Number 1205011161 (hereinafter "Account #1"), maintained by
18 Respondent METCALF at the La Jolla, California, branch of First
19 National Bank.

20 XIII

21 During the three-year period next preceding the filing
22 of this Accusation, in connection with the collection and
23 disbursement of said trust funds, Respondent METCALF:

24 (a) Failed to deposit trust funds entrusted to
25 Respondent METCALF into a trust fund account in the name of
26 Respondent METCALF as trustee at a bank or other financial
27 institution, in conformance with Section 2832(a) of Title 10,

1 California Code of Regulations (hereinafter "the Regulations"), in
2 that Respondent METCALF deposited such funds into Account #1,
3 which account was not maintained in the name of Respondent METCALF
4 as trustee; and

5 (b) Authorized Stephen Martin, an unlicensed person
6 without fidelity bond coverage, and Valerie Butcher, an unlicensed
7 person without fidelity bond coverage, to make disbursements from
8 Account #1.

9 XIV

10 During the three-year period next preceding the filing
11 of this Accusation, in course of the mortgage loan brokerage and
12 escrow handling activities described in Paragraph V, above,
13 Respondent METCALF used the fictitious business name "Ocean
14 Escrow" without obtaining a license bearing such fictitious name,
15 in violation of Section 2731(a) of the Regulations in conjunction
16 with Section 10159.5 of the Code.

17 XV

18 The acts and omissions of Respondents alleged above
19 constitute cause for the suspension or revocation of the licenses
20 and license rights of Respondents under the following provisions
21 of the Code:

22 (a) As to Respondent METCALF and Paragraphs VI and VII,
23 above, under Section 10137 of the Code in conjunction with Section
24 10177(d) of the Code;

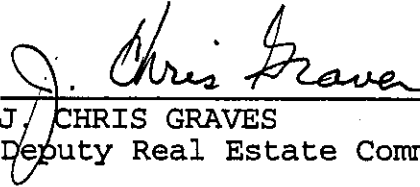
25 (b) As to Respondent CLINNIN and Paragraphs VI through
26 VIII, above, under Section 10130 of the Code in conjunction with
27 Section 10177(d) of the Code;

1 (c) As to Respondent METCALF and Paragraph XIII(a),
2 above, under Section 2832 of the Regulations in conjunction with
3 Sections 10145 and 10177(d) of the Code;

4 (d) As to Respondent METCALF and Paragraph XIII(b),
5 above, under Section 2834(a) of the Regulations in conjunction
6 with Sections 10145 and 10177(d) of the Code; and

7 (e) As to Respondent METCALF and Paragraph XIV, above,
8 under Section 2731(a) of the Regulations in conjunction with
9 Sections 10159.5 and 10177(d) of the Code.

10 WHEREFORE, Complainant prays that a hearing be conducted
11 on the allegations of this Accusation and that upon proof thereof,
12 a decision be rendered imposing disciplinary action against all
13 licenses and license rights of Respondents under the Real Estate
14 Law (Part 1 of Division 4 of the Business and Professions Code),
15 and for such other and further relief as may be proper under other
16 provisions of law, including the imposition of a fine of up to
17 \$10,000 pursuant to the provisions of Section 10139.5 of the
18 Business and Professions Code.

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20 
21 J. CHRIS GRAVES
22 Deputy Real Estate Commissioner

23 Dated at San Diego, California,
24 this 20th day of July, 1999 .
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