

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
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FILED
APR - 8 2011

DEPARTMENT OF REAL ESTATE
By *R. Mar*

8. BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) DRE No. H-5386 SAC
12)
13 SN SERVICING CORPORATION) STIPULATION AND AGREEMENT
and SCOTT EDWARD PESCH,) IN SETTLEMENT AND ORDER
14)
15 Respondents.)

16 It is hereby stipulated by and between SN SERVICING CORPORATION
17 (SNSC), and its attorney, Jonathan D. Jaffe and SCOTT EDWARD PESCH (PESCH), and his
18 attorney, Phillip M. Adelson, and the Complainant, acting by and through Richard K. Uno,
19 Counsel for the Department of Real Estate; as follows for the purpose of settling and disposing
20 of the Accusation filed on May 4, 2010, in this matter:

21 1. All issues which were to be contested and all evidence which was to be
22 presented by Complainant and Respondents at a formal hearing on the Accusation, which
23 hearing was to be held in accordance with the provisions of the Administrative Procedure Act
24 ("APA"), shall instead and in place thereof be submitted solely on the basis of the provisions of
25 this Stipulation and Agreement In Settlement and Order.

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1 2. Respondents have received, read and understand the Statement to Respondent,
2 the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate
3 in this proceeding.

4 3. On May 17, 2010, SNSC and PESCH filed a Notices of Defense pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondents hereby freely and voluntarily withdraw said Notice
7 of Defense. Respondents acknowledge that they understand that by withdrawing said Notice of
8 Defense they will thereby waive their right to require the Commissioner to prove the allegations
9 in the Accusation at a contested hearing held in accordance with the provisions of the APA and
10 that they will waive other rights afforded to them in connection with the hearing such as the right
11 to present evidence in defense of the allegations in the Accusation and the right to cross-examine
12 witnesses.

13 4. Respondents, pursuant to the limitations set forth below, hereby admit that the
14 factual allegations or findings of fact as set forth in the Accusation filed in this proceeding are
15 true and correct and the Real Estate Commissioner shall not be required to provide further
16 evidence of such allegations.

17 5. It is understood by the parties that the Real Estate Commissioner may adopt
18 the Stipulation and Agreement In Settlement and Order as his Decision in this matter, thereby
19 imposing the penalties and sanctions on Respondents' real estate licenses and license rights as
20 set forth in the below "Order". In the event that the Commissioner in his discretion does not
21 adopt the Stipulation and Agreement In Settlement and Order, it shall be void and of no effect,
22 and Respondents shall retain the right to a hearing and proceeding on the Accusation under all
23 the provisions of the APA and shall not be bound by any admission or waiver made herein.

24 6. The Order or any subsequent Order of the Real Estate Commissioner made
25 pursuant to this Stipulation and Agreement In Settlement and Order shall not constitute an
26 estoppel, merger or bar to any further administrative or civil proceedings by the Department of
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1 Real Estate with respect to any matters which were not specifically alleged to be causes for,
2 accusation in this proceeding.

3 7. Respondents understand that by agreeing to this Stipulation and Agreement In
4 Settlement and Order, Respondents agree to pay, pursuant to Section 10148 of the Business and
5 Professions Code, the cost of the audit which led to this disciplinary action. The amount of said
6 cost is \$6,970.20.

7 8. Respondents have received, read and understand the "Notice Concerning
8 Costs of Subsequent Audits". Respondents understand that by agreeing to this Stipulation and
9 Agreement in Settlement and Order, the findings set forth below in the DETERMINATION OF
10 ISSUES become final, and that the Commissioner may charge Respondents for the cost of any
11 audit conducted pursuant to Section 10148 of the Business and Professions Code to determine if
12 the violations have been corrected. The maximum costs of said audit will not exceed \$6,970.20.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, admissions and waivers, and solely for
15 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
16 agreed that the acts and/or omissions of Respondents, as described in the Accusation, constitute
17 grounds for the suspension or revocation of the licenses and license rights of Respondent SNSC
18 under the provisions of Sections 2832(h) and 2834 of Title 10, California Code of Regulations
19 (Regulations), and Sections 10130, 10145 and 10177(d) of the Business of Professions Code (the
20 Code) and of Respondent PESCH under the provisions of Section 2725 of the Regulations and
21 Sections 10159.2 and 10177(h) of the Code.

22 ORDER

23 1. The real estate broker license and license rights of Respondent SN
24 SERVICING CORPORATION (SNSC) under the Real Estate Law are suspended for a period
25 of sixty (60) days from the effective date of this Order; provided, however, that if Respondent
26 petitions, said suspension shall be stayed upon condition that:

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1 a. SNSC pays a monetary penalty pursuant to Section 10175.2 of the Business
2 and Professions Code at the rate of \$100.00 per day for thirty (30) days of the suspension for a
3 total monetary penalty of \$3,000.00. Upon receipt of payment, thirty (30) days of the
4 suspension will then be stayed.

5 b. Said payment shall be in the form of a cashier's check or certified check made
6 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
7 Department prior to the effective date of the Decision in this matter.

8 c. No further cause for disciplinary action against the real estate license of SNSC
9 occurs within one year from the effective date of the Decision in this matter.

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

15 e. If SNSC pays the monetary penalty, the remaining thirty (30) days of said sixty
16 (60) day suspension will be stayed, and if no further cause for disciplinary action against the real
17 estate license of SNSC occurs within one (1) year from the effective date of the Decision, the
18 stay hereby granted shall become permanent.

19 2. The real estate broker license and license rights of Respondent SCOTT
20 EDWARD PESCH (PESCH), under the Real Estate Law are suspended for a period of sixty
21 (60) days from the effective date of this Order; provided, however, that if PESCH petitions,
22 said suspension shall be stayed upon condition that:

23 a. PESCH pays a monetary penalty pursuant to Section 10175.2 of the Business
24 and Professions Code at the rate of \$100.00 per day for thirty (30) days of the suspension for a
25 total monetary penalty of \$3,000.00. Upon receipt of payment, thirty (30) days of the
26 suspension will then be stayed.

27 ///

1 b. Said payment shall be in the form of a cashier's check or certified check made
2 payable to the Recovery Account of the Real Estate Fund. Said check must be received by the
3 Department prior to the effective date of the Decision in this matter.

4 c. No further cause for disciplinary action against the real estate license of
5 PESCH occurs within one year from the effective date of the Decision in this matter.

6 d. If PESCH fails to pay the monetary penalty in accordance with the terms and
7 conditions of the Decision, the Commissioner may, without a hearing, order the immediate
8 execution of all or any part of the stayed suspension in which event PESCH shall not be entitled
9 to any repayment nor credit, prorated or otherwise, for money paid to the Department under the
10 terms of this Decision.


11 e. If PESCH pays the monetary penalty, the remaining thirty (30) days of said
12 sixty (60) day suspension will be stayed, and if no further cause for disciplinary action against
13 the real estate license of PESCH occurs within one (1) year from the effective date of the
14 Decision, the stay hereby granted shall become permanent.

15 3. Pursuant to Section 10148 of the Business and Professions Code,
16 Respondents shall pay for the cost of Audits No. OK 08-0084 (MLB) in the amount of
17 \$6,970.20 for the Commissioner's reasonable cost for: a) the audit which led to this disciplinary
18 action and, b) a subsequent audit to determine if Respondents have corrected the trust fund
19 violations found in the Determination of Issues. In calculating the amount of the
20 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary
21 for all persons performing audits of real estate brokers, and shall include an allocation for travel
22 costs, including mileage, time to and from the auditor's place of work and per diem.
23 Respondents shall pay such cost within sixty (60) days of receiving an invoice from the
24 Commissioner detailing the activities performed during the audit and the amount of time spent
25 performing those activities. The Commissioner may, in his discretion, vacate and set aside the
26 stay order, if payment is not timely made as provided for herein, or as provided for in a
27 subsequent agreement between the Respondents and the Commissioner. The vacation and the

1 set aside of the stay shall remain in effect until payment is made in full, or until Respondents
2 enter into an agreement satisfactory to the Commissioner to provide for payment. Should no
3 order vacating the stay be issued, either in accordance with this condition, the stay imposed
4 herein shall become permanent.

5
6 3/1/11

7 DATED

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9 RICHARD K. UNO, Counsel
10 DEPARTMENT OF REAL ESTATE

11 * * *

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

20 1/6/11
21 DATED

22 

23 CECILIA MATTANA-SMULLIN
24 Designated Broker Officer for Respondent
25 SN SERVICING CORPORATION

26 I have reviewed this Stipulation and Agreement as to form and content and have
27 advised my client accordingly.

28 2/24/11
29 DATED

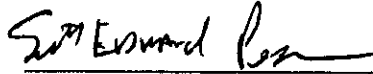
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31 JONATHAN D. JAFFE
32 Attorney for Respondent
33 SN SERVICING CORPORATION

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12-17-10

DATED

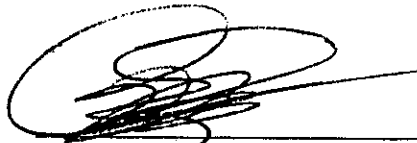


SCOTT EDWARD PESCH
Respondent

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

12-20-10

DATED



PHILLIP M. ADLESON
Attorney for Respondent
SCOTT EDWARD PESCH

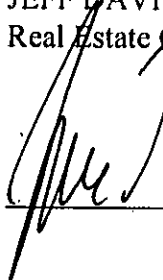
The foregoing Stipulation and Agreement is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on

APR 29 2011

IT IS SO ORDERED

3/30/2011

JEFF DAVI
Real Estate Commissioner



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RICHARD K. UNO, Counsel (SBN 98275)
Department of Real Estate
P. O. Box 187007
Sacramento, CA 95818-7007

Telephone: (916) 227-0789
-or- (916) 227-2380 (Direct)

FILED
MAY = 4 2010
DEPARTMENT OF REAL ESTATE
X. Mar

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
SN SERVICING CORPORATION) NO. H-5386 SAC
and SCOTT EDWARD PESCH,) ACCUSATION
)
Respondents.)

The Complainant, TRICIA D. SOMMERS, a Deputy Real Estate Commissioner of the State of California, for Accusation against Respondent SN SERVICING CORPORATION (SNSC) and SCOTT EDWARD PESCH (PESCH), is informed and alleges as follows:

1

The Complainant makes this Accusation against Respondents in her official capacity.

2

PESCH is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (the Code) as a real estate broker.

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SNSC is presently licensed by the Department of Real Estate (the Department) as a corporate real estate broker.

4

At all times herein mentioned until February 9, 2010, PESCH was licensed by the Department as the designated broker/officer of SNSC. As the designated broker/officer, PESCH was responsible, pursuant to Section 10159.2 of the Code, for the supervision of the activities of the officers, agents, real estate licensees and employees of SNSC for which a real estate license is required.

5

At all times herein mentioned, Respondents engaged in the business of, acted in the capacity of, advertised, or assumed to act as real estate brokers within the State of California within the meaning of Section 10131(d) of the Code, including the operation and conduct of a loan brokerage business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondents solicited lenders and borrowers for loans secured directly or collaterally by liens on real property, and wherein Respondents arranged negotiated, processed, and consummated such loans.

6

Whenever reference is made in an allegation in this Accusation to an act or omission of SNSC, such allegation shall be deemed to mean that the officers, directors, employees, agents and real estate licensees employed by or associated with SNSC committed such act or omission while engaged in furtherance of the business or operations of SNSC and while acting within the course and scope of their corporate authority and employment.

FIRST CAUSE OF ACTION

7

Beginning July 30, 2009, and continuing intermittently through December 9, 2009, an audit was conducted of SNSC'S main office located at 323 Fifth Street, Eureka,

1 California, and at the Oakland District Office of the Department located at 1515 Clay Street,
2 Suite 702, Oakland, California, where the auditor examined records for the period of January 1,
3 2008 through June 30, 2009 (the audit period).

4 8

5 While acting as a real estate broker as described in Paragraph 5, above, and
6 within the audit period, SNSC accepted or received funds in trust (trust funds) from or on behalf
7 of lenders, investors, borrowers and others in connection with mortgage loan brokerage
8 activities, deposited or caused to be deposited those funds into a number of bank accounts
9 maintained by SNSC as follows:

- 10 a) Wells Fargo Bank, P. O. Box 63020, San Francisco, CA 94163, Account
11 No. 412-1053573, entitled "SN Servicing Corporation-Master Lockbox
12 Account in Trust for Others" (Trust #1);

13 9

14 In the course of the activities described in Paragraph 5, in connection with the
15 collection and disbursement of trust funds, SNSC:

- 16 (a) Allowed seven persons, including, Robin P. Arkley, II, Jack Mendheim,
17 Phyllis Billingsley, Michele Davis, John Piland, Joni Yorks, and Jeanette
18 Nusbaum, who have no real estate licenses and have no adequate surety
19 bonds to withdraw funds from Trust #1, in violation of Section 2834 of
20 the Regulations;
- 21 (b) Respondent failed to keep trust funds separate, distinct, and apart from
22 funds belonging to any other person for whom the broker held funds in
23 Account No. 4121060792, an interest-bearing account. SNSC failed to
24 disclose to persons from whom trust funds were received and to
25 beneficiaries whose identity is known to broker at the time of establishing
26 the account, how interest would be calculated and paid under various
27 circumstances and whether service charges would be paid and by whom

1 as required by Section 2832(h) of the Regulations and Section 10145(d)
2 of the Code.

3 (c) Allowed trust funds to be transferred from Trust #1 and placed into non-
4 FDIC insured interest bearing account No. 4121060792 in violation of
5 Section 10145(d) of the Code;

6 (d) Failed to maintain a licensed Designated Officer from July 2, 2008
7 through February 16, 2009 as required by Section 10130 of the Code.

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9 The acts and/or omissions of SNSC as alleged above violate Sections 2832(h)
10 and 2834 of the Regulations and Sections 10130 and 10145(d) of the Code and are grounds for
11 discipline under Section 10177(d) of the Code.

12 SECOND CAUSE OF ACTION

13 11

14 Complainant refers to Paragraphs 1 through 10, above, and incorporates them
15 herein by reference.

16 12

17 PESCH failed to become an authorized signatory to Trust #1 and as such could
18 not exercise reasonable supervision over SNSC'S handling of trust accounts.

19 13

20 At all times herein above mentioned, PESCH was responsible, as the designated
21 broker officer of SNSC, for the supervision and control of the activities conducted on behalf of
22 SNSC by its officers and employees. PESCH failed to exercise reasonable supervision and
23 control over the property mortgage loan brokering activities of SNSC. In particular, PESCH
24 permitted, ratified and/or caused the conduct described in the First Cause of Action, above, to
25 occur, and failed to take reasonable steps, including but not limited to the handling of trust
26 funds, supervision of employees, and the implementation of policies, rules, procedures, and

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1 systems to ensure the compliance of the corporation with the Real Estate Law and the
2 Regulations.

3 14

4 The above acts and/or omissions of PESCH violate Section 10159.2 of the Code
5 and Section 2725 of the Regulations and constitute grounds for disciplinary action under Section
6 10177(h) of the Code.

7 WHEREFORE, Complainant prays that a hearing be conducted on the
8 allegations of this Accusation and that upon proof thereof a decision be rendered imposing
9 disciplinary action against all licenses and license rights of Respondents under the Real Estate
10 Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further
11 relief as may be proper under other provisions of law.

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13 
14 TRICIA D. SOMMERS
15 Deputy Real Estate Commissioner

16 Dated at Sacramento, California,
17 this 27th day of April, 2010.

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