

FILED

MAY 24 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

1 Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
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8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11
12 In the Matter of the Accusation of) NO. H-10715 SF
13)
14 KEVIN JAMES ROBERTS,) STIPULATION AND AGREEMENT
15) IN SETTLEMENT AND ORDER
16 Respondent.)

17 It is hereby stipulated by and between KEVIN JAMES ROBERTS (hereinafter
18 "Respondent"), and the Complainant, acting by and through Kenneth C. Espell, Counsel for the
19 Department of Real Estate, as follows for the purpose of settling and disposing of the
20 Accusation filed on June 30, 2009, in this matter:

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

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H-10715 SF

1 2. Respondent has received, read and understands 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. A Notice of Defense was filed on July 13, 2009 by Respondent, pursuant to
5 Section 11505 of the Government Code for the purpose of requesting a hearing on the
6 allegations in the Accusation. Respondent hereby freely and voluntarily withdraws said Notice
7 of Defense. Respondent acknowledges that he understands that by withdrawing said Notice of
8 Defense he will thereby waive his right to require the Commissioner to prove the allegations in
9 the Accusation at a contested hearing held in accordance with the provisions of the APA and
10 that he will waive other rights afforded to him in connection with the hearing such as the right to
11 present evidence in defense of the allegations in the Accusation and the right to cross-examine
12 witnesses.

13 4. This Stipulation is based on the factual allegations contained in the
14 Accusation. In the interests of expedience and economy, Respondent chooses not to contest
15 these allegations, but to remain silent and understands that, as a result thereof, these factual
16 allegations, without being admitted or denied, will serve as a prima facie basis for the
17 disciplinary action stipulated to herein. The Real Estate Commissioner shall not be required to
18 provide further evidence to prove said factual allegations.

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

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

6 DETERMINATION OF ISSUES

7 I

8 By reason of the foregoing stipulations, admissions and waivers and solely for
9 the purpose of settlement of the pending Accusation without a hearing, it is stipulated and
10 agreed that the facts alleged above are grounds for the suspension or revocation of the licenses
11 and license rights of Respondent KEVIN JAMES ROBERTS under Sections 10085, 10146,
12 10176(a),(c),(e)&(i), and 10177(d)&(j) of the Code and Sections 2970 and 2972 of the
13 Regulations.
14

15 ORDER

16 I

17 All licenses and licensing rights of Respondent KEVIN JAMES ROBERTS
18 under the Real Estate Law are suspended for a period of sixty (60) days from the effective date
19 of this Order; provided, however, that:

20 1. Thirty (30) days of said suspension shall be stayed for two (2) years upon the
21 following terms and conditions:

- 22 A. Respondent shall obey all laws, rules and regulations governing the
23 rights, duties and responsibilities of a real estate licensee in the State of
24 California; and
- 25 B. That no final subsequent determination be made, after hearing or upon
26 stipulation, that cause for disciplinary action occurred within two (2)
27 years from the effective date of this Order. Should such a determination

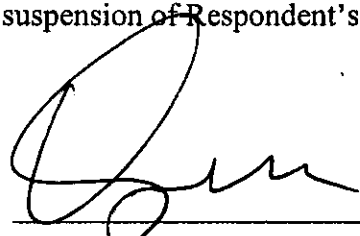
1 be made, the Commissioner may, in his discretion, vacate and set aside
2 the stay order and reimpose all or a portion of the stayed suspension.
3 Should no such determination be made, the stay imposed herein shall
4 become permanent.

5 2. The remaining thirty (30) days of said 60-day suspension shall be stayed upon
6 the condition that Respondent petition pursuant to Section 10175.2 of the Business and
7 Professions Code and pays a monetary penalty pursuant to Section 10175.2 of the Business and
8 Professions Code at a rate of \$50.00 for each day of the suspension for a total monetary penalty
9 of \$1,500.00:

- 10 A. Said payment shall be in the form of a cashier's check or certified check
11 made payable to the Recovery Account of the Real Estate Fund. Said
12 check must be delivered to the Department prior to the effective date of
13 the Order in this matter.
- 14 B. No further cause for disciplinary action against the Real Estate licenses of
15 said Respondent occurs within two (2) years from the effective date of the
16 decision in this matter.
- 17 C. If Respondent fails to pay the monetary penalty as provided above prior to
18 the effective date of this Order, the stay of the suspension shall be vacated
19 as to Respondent and the order of suspension shall be immediately
20 executed, under this Paragraph I of this Order, in which event Respondent
21 shall not be entitled to any repayment nor credit, prorated or otherwise,
22 for the money paid to the Department under the terms of this Order.
- 23 D. If Respondent pays the monetary penalty and any other moneys due under
24 this Stipulation and Agreement and if no further cause for disciplinary
25 action against the real estate licenses of Respondent occurs within two (2)
26 years from the effective date of this Order, the entire stay hereby granted
27 under Paragraphs I shall become permanent.

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

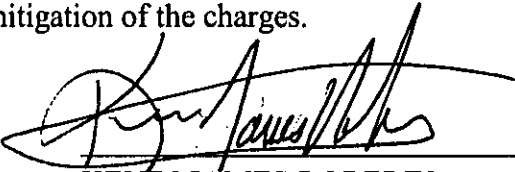
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7 DATED: 4/20/2010


KENNETH C. ESPELL, Counsel
DEPARTMENT OF REAL ESTATE

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9 * * *

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

17
18 DATED: 4/17/2010


KEYVIN JAMES ROBERTS
Respondent

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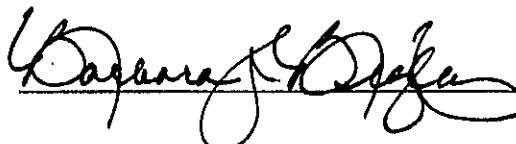
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The foregoing Stipulation and Agreement in Settlement is hereby adopted by the
Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock
noon on JUN 14 2010.

IT IS SO ORDERED

5/20/10

JEFF DAVI
Real Estate Commissioner



BY: Barbara J. Blgby
Chief Deputy Commissioner

FILED

JUN 30 2009

DEPARTMENT OF REAL ESTATE

1 JOHN VAN DRIEL (SBN 84056)
Department of Real Estate
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789
-or- (916) 227-0787 (Direct)
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8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13) NO. H-10715 SF
14 KEVIN JAMES ROBERTS,)
15 Respondent.) ACCUSATION
16)

17 The Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the
18 State of California, for Accusation against KEVIN JAMES ROBERTS (Respondent), is
19 informed and alleges as follows:

20 1

21 The Complainant E. J. Haberer II, makes this Accusation in his official capacity.

22 2

23 At all times mentioned herein Respondent was and now is licensed by the State
24 of California Department of Real Estate (the Department) as a real estate broker doing business
25 as "Classic Mortgage Company" (Classic) and "Rci Properties Kevin Roberts".

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2 At all times mentioned herein Respondent engaged in the business of, acted in
3 the capacity of, advertised, or assumed to act as a real estate licensee within the State of
4 California within the meaning of Section 10131(d) of the California Business and Professions
5 Code (the Code), for or in expectation of compensation, in that Respondent solicited and/or
6 performed services for borrowers in connection with loans secured directly or collaterally by
7 liens on real property, for or in expectation of compensation and claimed, demanded, charged,
8 received, collected or contracted for an advanced fee for such services, including but not limited
9 to the solicitation of William S. Kappy (Kappy) for the modification or renegotiation of his
10 existing mortgage loan(s) for the real property located at 2798 - 14th Ave., Carmel by the Sea,
11 California. Respondent represented to Kappy that he could and would obtain a successful and
12 sustainable modification of the terms of Kappy's loan(s).

13
14 On about September 29, 2008, Respondent, by making the representations set out
15 in paragraph 3 above, induced Kappy to sign an advance fee agreement entitled "Classic
16 Mortgage Company Loan Modification Fee Agreement" and collected an advanced fee of
17 \$5,000.00.

18
19 At all times mentioned herein, Respondent failed to submit to the Department
20 any or all materials used in his advanced fee agreement, including but not limited to the contract
21 form, any letters or cards used to solicit prospective sellers, and radio and television advertising,
22 at least 10 calendar days before it was used in obtaining said advance fee agreement, as
23 described in Paragraph 4, above, in violation of Section of 10085 of the Code and Section 2970
24 of Title 10, Chapter 6 of the California Code of Regulations (the Regulations).

25
26 At all times mentioned herein, Respondent collected an advance fee from Kappy,
27 as described in Paragraph 4, above, and failed to deposit such advanced fee, when collected, into

1 a trust account with a bank or other recognized depository, in violation of Section 10146 of the
2 Code.

3 7

4 At all times mentioned herein, Respondent commingled said trust funds with his
5 own funds, in that he deposited said advanced fee, as described in Paragraph 4, above, into his
6 general business account, in violation of Section 10176(e) of the Code.

7 8

8 At all times mentioned herein, Respondent failed to provide Kappy with an
9 accounting of said advance fee, in violation of Section 10146 of the Code and Section 2972 of
10 the Regulations, and failed to obtain a successful and sustainable modification of the terms of
11 Kappy's loan(s), as Respondent had promised to do.

12 9

13 The facts alleged above are grounds for the suspension or revocation of the
14 licenses and license rights of Respondent under the following provisions of the Code and/or the
15 Regulations:

16 (a) As to Paragraphs 3 through 8, under Sections 10176(a), (c), (i) or 10177(j)
17 of the Code.

18 (b) As to Paragraph 5, under Section 10085 of the Code, and Section 2970 of
19 Regulations in conjunction with Section 10177(d) of the Code;

20 (c) As to Paragraph 6, under Section 10146 of the Code;

21 (d) As to Paragraph 7, under Section 10176(e) of the Code; and,

22 (e) As to Paragraph 8, under Section 10146 of the Code, and Section 2972 of
23 the Regulations in conjunction with Section 10177(d) of the Code.

24 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
25 of this Accusation and that upon proof thereof a decision be rendered imposing disciplinary
26 action against all licenses and license rights of Respondent under the Real Estate Law (Part 1 of
27

1 Division 4 of the Business and Professions Code) and for such other and further relief as may be
2 proper under other applicable provisions of law.

3 
4 E. J. HABERER II
Deputy Real Estate Commissioner

5 Dated at Oakland, California,
6 this 22nd day of June, 2009.

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