

1 Department of Real Estate
320 West 4th Street, Suite 350
2 Los Angeles, California 90013-1105
3 Telephone: (213) 576-6982

FILED
MAY 10 2000
DEPARTMENT OF REAL ESTATE

By CR

9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 AMERICAN FUNDING ALLIANCE) NO. H-28374 LA
CORPORATION and BARRY EVAN) L-2000020365
14 CAMPBELL, individually and as) STIPULATION AND AGREEMENT
designated officer of American)
15 Funding Alliance Corporation,)
16 Respondents.)

17
18 It is hereby stipulated by and between Respondents
19 AMERICAN FUNDING ALLIANCE CORPORATION and BARRY EVAN CAMPBELL,
20 individually and as designated officer of American Funding
21 Alliance Corporation (sometimes referred to herein as
22 "Respondents"), and the Complainant, acting by and through
23 Darlene Averetta, Counsel for the Department of Real Estate,
24 as follows for the purpose of settling and disposing of the
25 Accusation filed on January 25, 2000, in this matter.

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1 1. All issues which were to be contested and all
2 evidence which was to be presented by Complainant and Respondents
3 at a formal hearing on the Accusation, which hearing was to be
4 held in accordance with the provisions of the Administrative
5 Procedure Act ("APA"), shall instead and in place thereof be
6 submitted solely on the basis of the provisions of this
7 Stipulation and Agreement.

8 2. Respondents have received, read and understand
9 the Statement to Respondent, the Discovery Provisions of the
10 APA and the Accusation filed by the Department of Real Estate
11 ("Department") in this proceeding.

12 3. On February 7, 2000, Respondents filed a Notice of
13 Defense pursuant to Section 11506 of the Government Code for the
14 purpose of requesting a hearing on the allegations in the
15 Accusation. Respondents hereby freely and voluntarily withdraw
16 said Notice of Defense. Respondents acknowledge that they
17 understand that by withdrawing said Notice of Defense, they will
18 thereby waive their right to require the Commissioner to prove
19 the allegations in the Accusation at a contested hearing held in
20 accordance with the provisions of the APA and that they will
21 waive other rights afforded to them in connection with the
22 hearing, such as the right to present evidence in defense of the
23 allegations in the Accusation and the right to cross-examine
24 witnesses.

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1 4. This Stipulation and Agreement ("Stipulation") is
2 based on the factual allegations contained in the Accusation
3 filed in this proceeding. In the interest of expedience and
4 economy, Respondents choose not to contest these factual
5 allegations, but to remain silent and understand that, as a
6 result thereof, these factual statements, without being admitted
7 or denied, will serve as a prima facie basis for the disciplinary
8 action stipulated to herein. This Stipulation and Respondents'
9 decision not to contest the Accusation are hereby expressly
10 limited to this proceeding and made for the sole purpose of
11 reaching an agreed disposition of this proceeding. Respondents'
12 decision not to contest the factual allegations is made solely
13 for the purpose of effectuating this Stipulation and is intended
14 by Respondents to be non-binding upon them in any actions against
15 Respondents by third parties. The Real Estate Commissioner shall
16 not be required to provide further evidence to prove such
17 allegations.

18 5. This Stipulation and any Order made pursuant to
19 this Stipulation shall have no collateral estoppel or res
20 judicata effect in any proceedings in which the Respondents and
21 the Department (or the Department's representative) are not
22 parties. This Stipulation is made by Respondents and received
23 by the Commissioner and the Department, with the express
24 understanding and agreement that it is for the purpose of
25 settling these proceedings only, and that this Stipulation is
26 not intended as, and shall not be deemed, used, or accepted as
27 an acknowledgment or admission of fact in any other judicial,

1 administrative, or other proceeding to which the Department is
2 not a party.

3 6. It is understood by the parties that the Real
4 Estate Commissioner may adopt the Stipulation as her decision
5 in this matter thereby imposing the penalty and sanctions on
6 Respondents' real estate licenses and license rights as set forth
7 in the below "Order". In the event that the Commissioner in her
8 discretion does not adopt the Stipulation, the Stipulation shall
9 be void and of no effect, and Respondents shall retain the right
10 to a hearing on the Accusation under all the provisions of the
11 APA and shall not be bound by any stipulation or waiver made
12 herein.

13 7. The Order or any subsequent Order of the Real
14 Estate Commissioner made pursuant to this Stipulation shall
15 not constitute an estoppel, merger or bar to any further
16 administrative or civil proceedings by the Department of Real
17 Estate with respect to any matters which were not specifically
18 alleged to be causes for accusation in this proceeding.

19 8. Respondents understand that by agreeing to this
20 Stipulation, Respondents agree to pay, pursuant to Business and
21 Professions Code Section 10148, the cost of the audit which led
22 to this disciplinary action. The amount of said cost is
23 \$3,354.21.

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1 9. Respondents have received, read, and understand
2 the "Notice Concerning Costs of Subsequent Audit". Respondents
3 further understand that by agreeing to this Stipulation, the
4 findings set forth below in the DETERMINATION OF ISSUES become
5 final, and the Commissioner may charge Respondents for the cost
6 of any subsequent audit conducted pursuant to Business and
7 Professions Code Section 10148 to determine if the violations
8 have been corrected. The maximum cost of said audit will not
9 exceed \$3,354.21.

10 DETERMINATION OF ISSUES

11 By reason of the foregoing stipulations and waivers and
12 solely for the purpose of settlement of the pending Accusation
13 without a hearing, it is stipulated and agreed that the following
14 determination of issues shall be made:

15 I

16 The conduct, acts and/or omissions of Respondent
17 AMERICAN FUNDING ALLIANCE CORPORATION, as set forth in the
18 Accusation, constitute cause to suspend or revoke the real estate
19 licenses and license rights of Respondent AMERICAN FUNDING
20 ALLIANCE CORPORATION under the provisions of Business and
21 Professions Code ("Code") Section 10177(d) for violation of Code
22 Sections 10163 and 10240 and Sections 2831, 2831.1, 2831.2, 2834,
23 and 2840 of Title 10, Chapter 6, California Code of Regulations.

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II

The conduct, acts and/or omissions of Respondent BARRY EVAN CAMPBELL, as set forth in the Accusation, constitute cause to suspend or revoke the real estate licenses and license rights of Respondent BARRY EVAN CAMPBELL under the provisions of Code Section 10177(d) for violation of Code Sections 10163 and 10240 and Sections 2831, 2831.1, 2831.2, 2834, and 2840 of Title 10, Chapter 6, California Code of Regulations.

III

The conduct, acts and/or omissions of Respondent BARRY EVAN CAMPBELL, as set forth in the Accusation, constitute cause to suspend or revoke the real estate licenses and license rights of Respondent BARRY EVAN CAMPBELL under the provisions of Code Sections 10177(d) and 10177(h) for violation of Code Section 10159.2.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

All licenses and licensing rights of Respondents AMERICAN FUNDING ALLIANCE CORPORATION and Respondent BARRY EVAN CAMPBELL, under the Real Estate Law are suspended for a period of ninety (90) days from the effective date of this Decision;

1. provided, however, that sixty (60) days of said suspension shall be stayed for two (2) years upon the following terms and conditions:

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1 (a) Respondents shall obey all laws, rules and
2 regulations governing the rights, duties and responsibilities
3 of a real estate licensee in the State of California.

4 (b) That no final subsequent determination be
5 made, after hearing or upon stipulation, that cause for
6 disciplinary action occurred within two (2) years of the
7 effective date of this Decision. Should such determination be
8 made, the Commissioner may, in her discretion, vacate and set
9 aside the stay order and reimpose all or a portion of the stayed
10 suspension. Should no such determination be made, the stay
11 imposed herein shall become permanent.

12 2. The initial thirty (30) day portion of said
13 suspension shall commence on the effective date of this Decision;
14 provided, however, that if Respondents petition, said suspension
15 (or a portion thereof) shall be stayed upon condition that:

16 (a) Respondents each pay a monetary penalty
17 pursuant to Section 10175.2 of the Business and Professions Code
18 at the rate of Fifty Dollars (\$50.00) for each day of the
19 suspension, for a total monetary penalty of \$1,500, each
20 Respondent.

21 (b) Said payment shall be in the form of a
22 cashier's check or certified check made payable to the Recovery
23 Account of the Real Estate Fund. Said check must be received
24 by the Department prior to the effective date of the Decision in
25 this matter.

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

8 (d) If Respondents pay the monetary penalty and
9 if no further cause for disciplinary action against the real
10 estate licenses of Respondents occurs within two (2) years from
11 the effective date of the Decision, the stay hereby granted shall
12 become permanent.

13 4. Pursuant to Section 10148 of the Business and
14 Professions Code, Respondents AMERICAN FUNDING ALLIANCE
15 CORPORATION and BARRY EVAN CAMPBELL, jointly or severally, shall
16 pay the Commissioner's reasonable cost for: (a) the audit which
17 led to this disciplinary action and, (b) a subsequent audit to
18 determine if Respondents have corrected the trust fund violations
19 found in Paragraphs I and II of the Determination of Issues. The
20 cost of the audit which led to this disciplinary action is
21 \$3,354.21. In calculating the amount of the Commissioner's
22 reasonable cost for the subsequent audit, the Commissioner may
23 use the estimated average hourly salary for all persons
24 performing audits of real estate brokers, and shall include an
25 allocation for travel time to and from the auditor's place of
26 work. Said amount for the subsequent audit shall not exceed
27 \$3,354.21.



1 Respondents shall pay such cost within sixty (60)
2 days of receiving an invoice from the Commissioner detailing
3 the activities performed during the audit and the amount of
4 time spent performing those activities. The Commissioner may
5 in her discretion, vacate and set aside the stay order, if
6 payment is not timely made as provided for herein, or as provided
7 for in a subsequent agreement between the Respondents and the
8 Commissioner. The vacation and set aside of the stay shall
9 remain in effect until payment is made in full, or until
10 Respondents enter into an agreement satisfactory to the
11 Commissioner to provide for payment. Should no order vacating
12 the stay be issued, the stay imposed herein shall become
13 permanent.

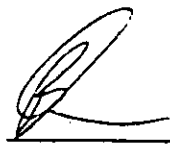
14 DATED: April 24, 2000

Darlene Averetta
DARLENE AVERETTA, Counsel for
the Department of Real Estate

16 * * *

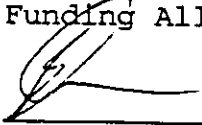
17 We have read the Stipulation and Agreement, and its
18 terms are understood by us and are agreeable and acceptable to
19 us. We understand that we are waiving rights given to us by
20 the California Administrative Procedure Act (including but not
21 limited to Sections 11506, 11508, 11509 and 11513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

1 DATED: 4-19-00



2 AMERICAN FUNDING ALLIANCE
3 CORPORATION, Respondent
4 by Barry Evan Campbell,
5 designated officer of American
6 Funding Alliance Corporation

7 DATED: 4-19-00



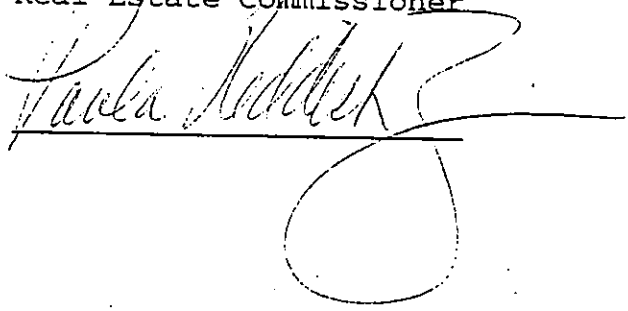
8 BARRY EVAN CAMPBELL, Respondent
9 individually, and as designated
10 officer of American Funding
11 Alliance Corporation

12 * * *

13 The foregoing Stipulation and Agreement is hereby
14 adopted as my Decision as to Respondents AMERICAN FUNDING
15 ALLIANCE CORPORATION and BARRY EVAN CAMPBELL, individually and as
16 designated officer of American Funding Alliance Corporation, and
17 shall become effective at 12 o'clock noon on May 30, 2000

18 IT IS SO ORDERED May 3, 2000

19 PAULA REDDISH ZINNEMANN
20 Real Estate Commissioner



SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of)
)
AMERICAN FUNDING ALLIANCE CORPORATION)
)
and BARRY EVAN CAMPBELL, individually)
)
and as designated officer of)
)
American Funding Alliance Corporation,)
)

Case No. H-28374 LA

OAH No. L-200020365

Respondent(s)

FILED
FEB 29 2000
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

By *[Signature]*

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on WEDNESDAY and THURSDAY, APRIL 5 and 6, 2000, at the hour of 9:00 A.M., 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: February 29, 2000

By

[Signature]
DARLENE AVERETTA, Counsel

cc: American Funding Alliance Corp.
Barry Evan Campbell
L.A. Audits/J. Borromeo
Sacto.
OAH

SAC

1 DARLENE AVERETTA, Counsel
(SBN 159969)
2 Department of Real Estate
320 West 4th Street, Suite 350
3 Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982
(Direct) (213) 576-6904
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6
7

FILED
JAN 25 2000
DEPARTMENT OF REAL ESTATE

By C. B. [Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-28374 LA
12 AMERICAN FUNDING ALLIANCE)
CORPORATION and BARRY EVAN)
13 CAMPBELL, individually and as) A C C U S A T I O N
designated officer of American)
14 Funding Alliance Corporation,)
15 Respondents.)
_____)

16 The Complainant, Thomas McCrady a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against Respondents AMERICAN FUNDING ALLIANCE CORPORATION and
19 BARRY EVAN CAMPBELL, individually and as designated officer of
20 American Funding Alliance Corporation, is informed and alleges as
21 follows:
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23 1.

24 The Complainant, Thomas McCrady, a Deputy Real Estate
25 Commissioner of the State of California, makes this Accusation
26 in his official capacity.
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AMERICAN FUNDING ALLIANCE CORPORATION ("AMERICAN FUNDING") and BARRY EVAN CAMPBELL ("CAMPBELL"), individually and as designated officer of American Funding Alliance Corporation (sometimes collectively referred to herein as "Respondents"), are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code").

3.

At all times material herein, AMERICAN FUNDING was, and currently is, licensed by the Department of Real Estate of the State of California ("Department") as a corporate real estate broker by and through CAMPBELL as the designated officer and broker, pursuant to the provisions of Code Section 10159.2.

4.

At all times material herein, CAMPBELL was licensed by the Department, individually as a real estate broker, and as the designated broker-officer of AMERICAN FUNDING. As the designated broker-officer, CAMPBELL is and was responsible, pursuant to the provisions of Code Section 10159.2, for the supervision and control of the activities requiring a real estate license conducted on behalf of AMERICAN FUNDING by its officers, agents and employees as necessary to secure full compliance with the provisions of the Real Estate Law.

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1 All further references to "Respondents", unless
2 otherwise specified, include the parties identified in
3 Paragraphs 2 through 4, above, and also include the officers,
4 directors, managers, employees, agents and real estate licensees
5 employed by or associated with said parties, who at all times
6 herein mentioned were engaged in the furtherance of the business
7 or operations of said parties and who were acting within the
8 course and scope of their authority, agency or employment.

9 FIRST CAUSE OF ACCUSATION

10 6.

11 On or about November 4, 1999, the Department completed
12 an examination of Respondents AMERICAN FUNDING and CAMPBELL's
13 books and records pertaining to the real estate and trust fund
14 handling activities described herein below. Said examination
15 covered a period from approximately January 1, 1998 through
16 September 30, 1999. Said examination revealed violations of the
17 Code and Title 10, Chapter 6, California Code of Regulations
18 ("Regulations") as set forth below.

19 7.

20 At all times material herein, Respondents AMERICAN
21 FUNDING and CAMPBELL engaged in the business of, acted in the
22 capacity of, advertised or assumed to act as real estate brokers
23 in the State of California within the meaning of Code Section
24 10131(d). Said activity included the operation and conduct of a
25 mortgage loan brokerage with the public wherein Respondents
26 solicited borrowers or lenders for, or negotiated loans, or

27



1 collected payments or performed services for borrowers or lenders
2 or note holders, in connection with loans secured directly or
3 collaterally by a lien on real property or a business
4 opportunity.

5 8.

6 In connection with the above-described real estate
7 sale business, Respondents AMERICAN FUNDING and CAMPBELL engaged
8 in the business of, acted in the capacity of, advertised, or
9 assumed to act as escrow holder, servicer and/or agent and
10 thereby acted or assumed to act under the exemption from the
11 provisions of the Escrow Law as provided by Section 17006(a)(4)
12 of the California Financial Code.

13 9.

14 At all times material herein, in connection with the
15 activities described in Paragraphs 7 and 8, above, Respondents
16 AMERICAN FUNDING and CAMPBELL accepted or received funds,
17 including funds in trust ("trust funds") from or on behalf of
18 parties to transactions handled by Respondents. Thereafter,
19 Respondents made deposits and/or disbursements of such funds.
20 From time to time herein mentioned, said trust funds were
21 deposited and/or maintained by Respondents in bank accounts
22 including, but not necessarily limited to, bank accounts at
23 Foothill Independent Bank located at 1050 W. Sixth Street,
24 Corona, California 91720. Said bank accounts included, but were
25 not necessarily limited to, the following: Account Number
26 451105795, "American Funding Alliance Corporation Trust Account"
27 ("T/A 1") and Account Number 451106651, "American Funding



Alliance Escrow Trust Account" ("T/A 2").

10.

In the course of activities described in Paragraphs 7, 8 and 9, above, and during the examination period described in Paragraph 6, Respondents AMERICAN FUNDING and CAMPBELL acted in violation of the Code and the Regulations as follows:

(a) Respondents failed to maintain complete and accurate control records for T/A 1 and T/A 2, in violation of Regulation 2831.

(b) Respondents failed to maintain complete separate records for T/A 1 and T/A 2, in violation of Code Section 10145 Regulation 2831.1.

(c) Respondents failed to maintain a monthly reconciliation of the control record to the separate records for T/A 1 and T/A 2, in violation of Code Section 10145 and Regulation 2831.2.

(d) Respondents caused, permitted and/or allowed William R. Vogel, a licensed real estate salesperson, to sign on T/A 1 and T/A 2 with no written authorization, in violation of Regulation 2834.

(e) Respondents failed to deliver to all borrowers, a statement, in writing, containing all the information required by Code Section 10241. The Mortgage Loan Disclosure Statement was not provided to borrowers prior to March, 1999, and in the loan files examined, wherein a Mortgage Loan Disclosure Statement was provided, it was not complete, in violation of Code Section 10240



and/or Regulation 2840.

(f) Respondents operated an unlicensed branch office at 27840 Del Rio Road, Suite C, Temecula, California, in violation of Code Section 10163.

11.

The conduct, acts and/or omissions of Respondents AMERICAN FUNDING and CAMPBELL, as described in Paragraph 10, above, violated the Code and the Regulations as set forth below:

PARAGRAPH

PROVISIONS VIOLATED

10(a)

Regulation 2831

10(b)

Regulation 2831 .1

10(c)

Code Section 10145 and Regulation 2831.2

10(d)

Regulation 2834

10(e)

Code Section 10240 and Regulation 2840

10(f)

Code Section 10163

Each of the foregoing violations constitute cause for the suspension or revocation of all real estate licenses and license rights of Respondents under the provisions of Code Sections 10177(g) and/or 10177(d).

SECOND CAUSE OF ACCUSATION

(Violation of Code Section 10159.2)

12.

Complainant incorporates herein by reference the Preamble and the allegations of Paragraphs 1 through 11, inclusive, herein above.

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The conduct, acts and/or omissions, of Respondent CAMPBELL in allowing AMERICAN FUNDING to violate the Real Estate Law as described herein above, constitutes a failure by Respondent CAMPBELL, as the officer designated by a corporate broker licensee, to exercise the supervision and control over the activities AMERICAN FUNDING, as required by Code Section 10159.2. Said conduct is cause to suspend or revoke the real estate licenses and license rights of Respondent CAMPBELL under Code Sections 10177(d), 10177(g) and/or 10177(h).

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against all licenses and license rights of Respondents, AMERICAN FUNDING ALLIANCE CORPORATION and BARRY EVAN CAMPBELL, individually and as designated officer of American Funding Alliance Corporation, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code), and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California
this 25th day of January, 2000.

THOMAS MCCRADY
Deputy Real Estate Commissioner

cc: American Funding Alliance Corporation
Barry Evan Campbell
Thomas McCrady
Borromeo/SD Audits
Ellen Coleman
SACTO