

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

FILED
JUL 6 2008
DEPARTMENT OF REAL ESTATE

Jana B. Stone

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9 BEFORE THE DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13 MARK I MORTGAGE, and)
14 MARK DOUGLAS PRATHER,)
15 individually and as designated)
16 Broker-officer of Mark I)
17 Mortgage, Buy America Real)
18 Estate, Inc. and)
19 FLETCHER LEE PRATHER,)
individually and as designated)
Officer of Mark I Mortgage,)
Respondents.)

NO. H-32207 LA
L-2005100437

STIPULATION AND AGREEMENT

20 It is hereby stipulated by and between Respondents
21 MARK DOUGLAS (M.D) PRATHER AND FLETCHER LEE (F.L.) PRATHER doing
22 business as (dba) MARK I MORTGAGE, and their attorney of record,
23 Mr. Frank Buda, Esq., and the Complainant, acting by and through
24 Kelvin K. Lee, Counsel for the Department of Real Estate, as
25 follows for the purpose of settling and disposing of the
26 Accusation filed on September 27, 2005, in this matter.

27 1. All issues which were to be contested and all

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

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

11 3. On October 3, 2005, Respondents filed a Notice of
12 Defense pursuant to Section 11506 of the Government Code for the
13 purpose of requesting a hearing on the allegations in the
14 Accusation. Respondents hereby freely and voluntarily withdraw
15 said Notice of Defense. Respondents acknowledge that they
16 understand that by withdrawing said Notice of Defense, they will
17 thereby waive their right to require the Commissioner to prove
18 the allegations in the Accusation at a contested hearing held in
19 accordance with the provisions of the APA and that they will
20 waive other rights afforded to them in connection with the
21 hearing, such as the right to present evidence in defense of the
22 allegations in the Accusation and the right to cross-examine
23 witnesses.
24

25 4. This Stipulation and Agreement ("Stipulation") is
26 based on the factual allegations contained in the Accusation
27 filed in this proceeding. In the interest of expedience and

1 economy, Respondent chooses not to contest these factual
2 allegations, but to remain silent and understands that, as a
3 result thereof, these factual statements, without being admitted
4 or denied, will serve as a prima facie basis for the
5 disciplinary action stipulated to herein. The Real Estate
6 Commissioner shall not be required to provide further evidence
7 to prove such allegations.

8 5. This Stipulation and Respondents' decision not to
9 contest the Accusation are made for the purpose of reaching an
10 agreed disposition of this proceeding and are expressly limited
11 to this proceeding and any other proceeding or case in which the
12 Department of Real Estate ("Department"), or another licensing
13 agency of this state, another state, or if the federal
14 government is involved and otherwise shall not be admissible in
15 any other criminal or civil proceedings.

16 6. It is understood by the parties that the Real
17 Estate Commissioner may adopt the Stipulation as his decision
18 in this matter thereby imposing the penalty and sanctions on
19 Respondent's real estate licenses and license rights as set
20 forth in the below "Order". In the event that the Commissioner
21 in his discretion does not adopt the Stipulation, the
22 Stipulation shall be void and of no effect, and Respondent shall
23 retain the right to a hearing on the Accusation under all the
24 provisions of the APA and shall not be bound by any stipulation
25 or waiver made herein.
26

27 7. The Order or any subsequent Order of the Real

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

6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations and waivers
8 and solely for the purpose of settlement of the pending
9 Accusation without a hearing, it is stipulated and agreed that
10 the following determination of issues shall be made:

11 I

12 The conduct, acts and/or omissions of Respondent MARK
13 DOUGLAS (M.D) PRATHER as set forth in the Accusation, constitute
14 cause for the discipline of the real estate licenses and license
15 rights of Respondent MARK DOUGLAS (M.D) PRATHER under Section
16 10177(d) of the Business and Profession Code for violation of
17 Business and Professions Code Section 10160.

18 II

19 The conduct, acts and/or omissions of FLETCHER LEE
20 (F.L.) PRATHER, as set forth in the Accusation, constitute cause
21 for the discipline of the real estate licenses and license
22 rights of Respondent FLETCHER LEE (F.L.) PRATHER, under 10177(h)
23 of the Business and Professions Code ("Code").

24 III

25 The conduct, acts and/or omissions of MARK I MORTGAGE,
26 as set forth in the Accusation, constitute cause for the
27

1 discipline of the real estate licenses and license rights of
2 Respondent MARK I MORTGAGE, under 10177(h) of the Business and
3 Professions Code ("Code") for violation of Business and
4 Professions Code Sections 10177(d) and 10240.

5
6 ORDER

7 WHEREFORE, THE FOLLOWING ORDER is hereby made:

8 I. The licenses and license rights held by
9 Respondent MARK DOUGLAS (M.D) PRATHER under the Real Estate Law,
10 are hereby publicly reprovod.

11 II. The licenses and license rights held by FLETCHER
12 LEE (F.L.) PRATHER and MARK I MORTGAGE ET. AL. are suspended for
13 sixty (60) days from the effective date of this Decision;

14 1. Provided, however, that thirty (30) days of said
15 suspension shall be stayed for two (2) years upon the following
16 terms and conditions:

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

20 (b) That no final subsequent determination be
21 made, after hearing, or upon stipulation, that cause for
22 disciplinary action occurred within two (2) years of the
23 effective date of this Decision. Should such determination be
24 made, the Commissioner may, in his discretion, vacate and set
25 aside the stay order and reimpose all or a portion of the stayed
26
27

1 suspension. Should no such determination be made, the stay
2 imposed herein shall become permanent.

3 2. The initial thirty (30) day portion of said
4 suspension shall commence on the effective date of this
5 Decision; however, that if Respondents petition, said
6 suspension, (or a portion thereof) shall be stayed upon
7 condition that:

8 (a) The each Respondent pay a monetary penalty
9 pursuant to Section 10175.2 of the Business and Professions Code
10 in the amount of \$1,500.00 to have thirty (30) days of the
11 suspension stayed at the rate of \$50.00 per day.

12 (b) Said payment shall be in the form of a
13 cashier's check or certified check made payable to the Recovery
14 Account of the Real Estate Fund. Said check must be received
15 by the Department prior to the effective date of the Decision in
16 this matter.

17 (c) No further cause for disciplinary actions
18 against the real estate license of Respondents occur within two
19 (2) years from the effective date of the Decision in this
20 matter.

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

3 (e) If Respondents pay the monetary penalty and
4 if no further cause for disciplinary action against the real
5 estate licenses of Respondents occurs within two (2) years from
6 the effective date of the Decision, the stay hereby granted
7 shall become permanent.

8 3. Respondent F.L. PRATHER shall, prior to the
9 effective date of the decision, submit proof satisfactory to the
10 Commissioner of having taken and successfully completed the
11 continuing education course on trust fund accounting and
12 handling specified in subdivision (a) of Section 10170.5 of the
13 Business and Professions Code. Proof of satisfaction of this
14 requirement includes evidence that the Respondent has
15 successfully completed the trust fund account and handling
16 continuing education course within 120 days prior to the
17 effective date of the Decision in this matter.

18 DATED: 5/11/06

Kelvin K. Lee

KELVIN K. LEE, Counsel for
the Department of Real Estate

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21 * * *

22 We have read the Stipulation and Agreement, and have
23 discussed it with our counsel, and its terms are understood by
24 us and are agreeable and acceptable to us. We understand that
25 we are waiving rights given to us by the California
26 Administrative Procedure Act (including but not limited to
27 Sections 11506, 11508, 11509 and 11513 of the Government Code),

1 and we willingly, intelligently and voluntarily waive those
2 rights, including the right of requiring the Commissioner to
3 prove the allegations in the Accusation at a hearing at which we
4 would have the right to cross-examine witnesses against us and
5 to present evidence in defense and mitigation of the charges.

6 ///

7 ///

8 DATED: 4-24-06



MARK DOUGLAS (M.D) PRATHER
Respondent

9
10 DATED: 4-24-06



FLETCHER LEE (F.L.) PRATHER,
Respondent

11
12 DATED: 4-28-06



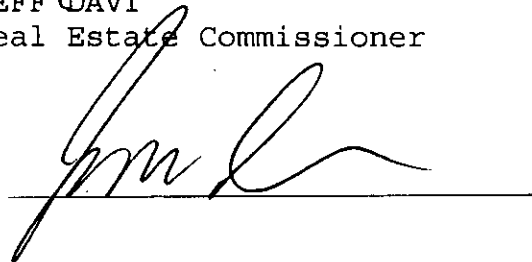
FRANK BUDA, Counsel for
Respondent MARK I MORTGAGE

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14 * * *

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16 The foregoing Stipulation and Agreement is hereby
17 adopted as my Decision in this matter and shall become effective
18 at 12 o'clock noon on JUL 26 2006.

19 IT IS SO ORDERED

20 6-13-06
JEFF DAVI
Real Estate Commissioner



facto
law

FILED
SEP 27 2005
DEPARTMENT OF REAL ESTATE

1 KELVIN LEE, Counsel (SBN 152867)
2 Department of Real Estate
3 320 West Fourth St., #350
4 Los Angeles, CA 90013

Laura B. Stone

5 (213) 576-6982
6 (213) 576-6905

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * * *

11 In the Matter of the Accusation of) No. H-32207 LA
12)
13 MARK 1 MORTGAGE, and MARK DOUGLAS)
14 PRATHER, individually and as)
15 designated broker-officer of) A C C U S A T I O N
16 Mark 1 Mortgage, Buy America Real)
17 Estate and Alta Real Estate, Inc.)
18 And FLETCHER LEE PRATHER,)
19 individually and as designated)
20 officer of Mark 1 Mortgage,)
21 Respondents.)

22 The Complainant, Janice Waddell, a Deputy Real Estate
23 Commissioner, for cause of Accusation against MARK 1 MORTGAGE,
24 MARK DOUGLAS PRATHER, individually and as designated broker-
25 officer of Mark 1 Mortgage, Buy America Real Estate and Alta Real
26 Estate, Inc. and FLETCHER LEE PRATHER, individually and as
27 designated officer of Mark 1 Mortgage, is informed and alleges as
follows:

1.

The Complainant, Janice Waddell, a Deputy Real Estate

1 Commissioner of the State of California, makes this Accusation in
2 her official capacity.

3 2.

4 Respondent MARK 1 MORTGAGE, (hereinafter "MARK 1"), is
5 presently licensed and at all times relevant herein was licensed
6 under the Real Estate Law, Part 1 of Division 4 of the California
7 Business and Professions Code (hereinafter "Code") as a corporate
8 real estate broker. Respondent MARK 1 has been and is licensed
9 by the Department of Real Estate of the State of California
10 (hereinafter "Department") as a corporate real estate broker
11 since May 7, 1997.

12 (a) Respondent MARK 1 was and is authorized to act by
13 and thorough Respondent MARK DOUGLAS PRATHER, from on or before
14 November 2, 2002 through the present; and by and through
15 Respondent FLETCHER LEE PRATHER from May 7, 1997 through on or
16 about November 1, 2002; both acting, pursuant to the provisions
17 of Code Section 10159.2, for the supervision and control of the
18 activities conducted on behalf of Respondent MARK 1 by its
19 officers and employees.

20 (b) Respondent MARK 1 was subject to a prior
21 disciplinary action in Case No. H-28251 LA in which, effective
22 February 10, 2000, the corporate license of Respondent MARK 1 was
23 suspended ninety days, the first thirty days was stayed on terms
24 and conditions, for violating Code Section 10145 and Regulations
25 2726, 2832.1, 2832 and 2834 of Title 10, Chapter 6 of the
26 California Code of Regulations.

27

1 3.

2 Respondent MARK DOUGLAS PRATHER (hereinafter "M. D.
3 PRATHER") is presently licensed and at all times relevant herein
4 was licensed under the Code as a real estate broker. Respondent
5 M. D. PRATHER has been licensed since on or before October 11,
6 2002. Since on or before November 6, 2002 and continuing to the
7 present, Respondent M. D. PRATHER was and is the broker-officer
8 of Respondent MARK 1 designated pursuant to Code Section 10159.2
9 to be responsible for the supervision and control of the
10 activities conducted on behalf of MARK 1 by its officers and
11 employees as necessary to secure full compliance with the Real
12 Estate Law. Respondent M. D. PRATHER is also the designated
13 broker officer of Buy America Real Estate and was, until June 16,
14 2005, designated broker officer of Alta Real Estate, Inc.

15 4.

16 Respondent FLETCHER LEE PRATHER (hereinafter "F. L.
17 PRATHER") is presently licensed and at all times relevant herein
18 was licensed under the Code as a real estate broker. Respondent
19 F. L. PRATHER has been licensed since on or before December 22,
20 1971. Between May 7, 1997 until on or about November 5, 2002,
21 Respondent F. L. PRATHER was the broker-officer of Respondent
22 MARK 1 designated pursuant to Code Section 10159.2 to be
23 responsible for the supervision and control of the activities
24 conducted on behalf of MARK 1 by its officers and employees as
25 necessary to the supervision and control of the activities
26 conducted on behalf of MARK 1 by its officers and employees as
27 necessary to secure full compliance with the Real Estate Law.

5

At all times material herein, Respondent MARK 1 was engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California within the meaning of Code Sections 10131(d). Said activity included soliciting borrowers and lenders for, and negotiating the terms of loans secured by real property between borrowers and third party lenders for or in expectation of compensation.

6.

All further references to "Respondents" include all Respondents and also include the employees, agents and real estate licensees employed by or associated with Respondents, who at all times material herein were engaged in the furtherance of the business or operations of said parties and who were acting within the course and scope of their authority, agency or employment.

7.

On December 26 and 27, 2002 the Department examined the books and records of Respondent MARK 1 covering the period of time between December 1, 2001 through November 31, 2002. The results of that examination are set forth in an Audit Report dated February 21, 2003, number LA 020187. That examination revealed violations of the Code and California Code of Regulations, Title 10, Chapter 6 (hereafter "Regulations"), as set forth below, and as more specifically set forth in Audit Report and the Exhibits attached to said Audit.

8.

Respondent MARK 1, as a mortgage broker as set forth in Paragraph 5 above, was required by Code §§10240 and 10241(b) and Regulations 2840 and 2840.1 to provide a Mortgage Loan Disclosure Statement/Good Faith Estimate (MLDS) to the borrowers and to disclose to borrowers all brokerage commissions contracted for or to be received. The MLDSes provided to borrowers failed to comply with Code §§10240 and 10241(b) and Regulations 2840 and 2840.1 in that:

(a) The MLDS form, approved pursuant to Regulation 2840.1, required the fees paid to the broker to be specially allocated in the column entitled "Paid To Broker". In none of the MLDSes in the transactions above set forth were the fees paid to Respondent MARK 1 set forth in that column, in willful violation of Regulations 2840 and 2840.1.

(b) While fees charged by the lender were set forth in the MLDSes, the entry, "Mtg Broker Commission Fee" in the MLDSes were routinely left blank. Fees paid to Respondent MARK 1 were not disclosed in the MLDSes at all, in willful violation of Regulations 2840 and 2840.1.

(c) The MLDSes used in the above transaction, approved pursuant to Regulations 2840 and 2840.1, required Respondent MARK 1 to disclose, on the bottom of page 1 thereof, all "Compensation to Broker (Not Paid Out of Loan Proceeds). . .Any Additional Compensation from Lender. . .() No () Yes \$___(if known)". In all MLDSs provided in the below transactions, each and every Respondent caused, allowed and permitted those MLDSes to falsely

1 represent that Respondent MARK 1 would not receive any such
2 compensation. Respondents well knew such representations to be
3 false. Respondents failed to disclose to the following borrowers
4 the commissions which were received from the lenders in the form
5 of yield spread premiums, rebates or service release premiums, as
6 follows:

7 Borrower:	Loan Number:	Settlement Date:	Total Amount:
8 Carla Maria Saenz	97022190	3-4-02	\$5679.48
9 Miriam Carrillo	97025506	8-30-02	\$5377.98
10 Bruce Reichenbacher	67411448	9-23-02	\$2631.13
11 Christopher Irons &	131580581	10-31-02	Two loans
12 & Natalie Rayman	13158063	10-31-02	Both Loans \$5268.88
13 Jude & Rosalina Ten	97027567	12-6-02	\$2704.02

14 The fees set forth herein above were over and above the fees
15 disclosed on the MLDSes and Settlement Statements rendered at
16 close of escrow, except in the Irons/Rayman and the Carillo
17 loans. The fees set forth herein above in the Saenz,
18 Reichenbacher and Ten loans were never disclosed to the
19 borrowers. The conduct herein constitutes the making of
20 substantial misrepresentations, fraud or dishonest dealing by
21 Respondents.

22 (b) Code Section 10240 required Respondent MARK 1 to
23 maintain for three years from the close of the loan true copies
24 of the MLDS signed by the borrower. Respondent MARK 1 failed to
25 maintain copies of MLDSes with the signatures of the borrowers in
26 the following loan transactions:

27 //

	Borrower:	Loan Number:	Date Close:
1	Miriam Carillo	97025506	8-30-02
2	Bruce Reichenbacher	67411448	9-23-02
3	Samuel Blakely &		
4	Norma Hoskins	11150	8-9-02
5	Lisa M. Lozano	9702506	7-31-02
6	Jude & Rosalina Ten	9702506	12-6-02
7	Steve & Jennifer Pasol	67421586	11-12-02
8	Catherine & Peter Rasoe	0018383190	undated
9	John and Rosita Dorris	0131518029	10-1-02

11 9.

12 In the conduct of its mortgage loan business,
 13 Respondent MARK 1 would sometimes collect appraisal fees in
 14 advance and place said appraisal fees into a trust account. On
 15 two loans, the lenders reimbursed to Respondent MARK 1 the
 16 appraisal fees. Respondent MARK 1 failed to segregate the
 17 appraisal fees into the escrow account, in violation of Code
 18 Section 10145 and Regulation 2832. Respondent placed said
 19 appraisal funds into its general account and paid the appraisers
 20 from its general account, in the following transactions:

21	Borrower	Loan No.	Date Recd.	Amt.	Date Paid
22	Saenz	97022190	3-4-02	\$300	3-12-02
23	Blakely & Hoskins	11150	6-15-02	\$365	9-5-02

24 10.

25 As of the December 27, 2002, Respondent MARK 1 failed
 26 to have in its possession the original real estate licenses of
 27 Miguel Angel Chavez, Emma Vega and Xochitl Y. Gonzalez, in

1 willful violation of Code Section 10160 and Regulation 2753.

2 11.

3 Respondents M. D. PRATHER and F. L. PRATHER failed to
4 exercise reasonable supervision over the activities of the
5 officers and employees of Respondent MARK 1, during their
6 respective tenures as designated officer, in willful violation of
7 Code Section 10159.2.

8 12.

9 The acts, conduct and omissions set forth in Paragraphs
10 8, 9, 10 and 11 above constitute grounds to discipline the
11 licenses and license rights of Respondents MARK 1, M. D. PRATHER
12 and F. L. PRATHER under the following Code Sections:

13 (a) 10176(a) for substantial misrepresentations and
14 the undisclosed compensation in MARK 1's MLDSes.
15

16 (b) 10176(i) for fraud or dishonest dealing in
17 concealing from the borrowers the receipt of the rebates, service
18 release premiums and yield spread premiums.

19 (c) 10177(d) for willful violations of the following
20 Code Sections and Regulations:

21 (i) 10145 and Regulation 2832 for failure to
22 place reimbursements of appraisal fees into its trust account.

23 (ii) 10240 for failure to maintain for three
24 years copies of signed MLDSes.

25 (iii) 10241 and Regulations 2840 and 2840.1 for
26 failure to properly and accurately complete the MLDSes.

27 (iv) Code Section 10160 and Regulation 2753.

1 (d) 10177(g) for negligence in transactions for which a
2 license is required.

3 (e) 10177(h) for failure to supervise as required by
4 Code Section 10159.2.

5 WHEREFORE, Complainant prays that a hearing be
6 conducted on the allegations of this Accusation and that upon
7 proof thereof, a decision be rendered imposing disciplinary
8 action against all licenses and/or license rights of Respondent
9 MARK 1 MORTGAGE, Respondent MARK DOUGLAS PRATHER and FLETCHER LEE
10 PRATHER under the Real Estate Law and for such other and further
11 relief as may be proper under applicable provisions of law.

12 Dated at Los Angeles, California

13 this 27 day of September, 2005.

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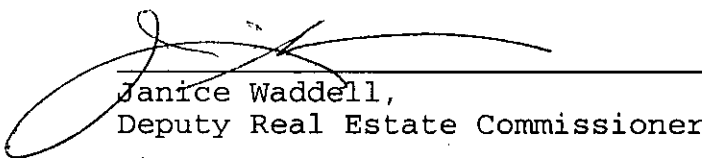
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Janice Waddell,
Deputy Real Estate Commissioner

cc: Mark 1 Mortgage Corporation,
Mark Douglas Prather
Fletcher Lee Prather
Sacto.
Janice Waddell
Audits