

FILED

SEP 21 2022

DEPT. OF REAL ESTATE

By _____

1 LAURENCE D. HAVESON, Counsel (SBN 152631)
2 Department of Real Estate
3 320 West 4th Street, Suite 350
4 Los Angeles, California 90013-1105
5 Telephone: (213) 576-6982
6 Direct: (213) 576-6854
7 Fax: (213) 576-6917
8 *Attorney for Complainant*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of

No. H-42092-LA

12 SMART CHOICE REALTY &
13 MORTGAGE FINANCE, INC., and
14 HAROLD JOSEPH OSBORNE,
15 individually and as designated officer of
16 Smart Choice Realty & Mortgage
17 Finance, Inc.,

STIPULATION AND AGREEMENT

Respondents.

17 It is hereby stipulated and agreed by and between Respondents SMART CHOICE
18 REALTY & MORTGAGE FINANCE, INC. (“SCRMFI”), and HAROLD JOSEPH OSBORNE
19 (“OSBORNE”), individually and as designated officer of SCRMFI, (“Respondents”) and their
20 attorney of record, Mark Said, Esq., and the Complainant, acting by and through Laurence
21 Haveson, Counsel for the Department of Real Estate (“Department”), as follows for the purpose
22 of settling and disposing of the Accusation filed on September 13, 2021 (“Accusation”) in this
23 matter:

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

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

4 3. On October 18, 2021, Respondents filed a Notice of Defense pursuant to section
5 11506 of the Government Code for the purpose of requesting a hearing on the allegations in the
6 Accusation. Respondents hereby freely and voluntarily withdraw said Notice of Defense.
7 Respondents acknowledge that they understand that by withdrawing said Notice of Defense,
8 Respondents will thereby waive their right to require the Real Estate Commissioner
9 (“Commissioner”) to prove the allegations in the Accusation at a contested hearing held in
10 accordance with the provisions of the APA and that Respondents will waive other rights afforded
11 to them in connection with the hearing such as the right to present evidence in defense of the
12 allegations in the Accusation and the right to cross-examine 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 below) in Paragraphs 3 through 15 of the
15 Accusation filed in this proceeding are true and correct and the Real Estate Commissioner shall
16 not be required to provide further evidence of such allegations.

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

24 6. The Order or any subsequent Order of the Commissioner made pursuant to this
25 Stipulation shall not constitute an estoppel, merger or bar to any further administrative or civil
26 proceedings by the Department with respect to any matters that were not specifically alleged to be
27 causes for the Accusation in this proceeding.

28 ///

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

7 4. Respondent OSBORNE shall pay, severally or jointly with Respondent SCRMFI,
8 the sum total of \$5,031.50, amounting to the Commissioner's reasonable cost of the investigation
9 and enforcement that led to this disciplinary action, **within one-hundred and eighty (180) days**
10 **from the effective date of this Decision and Order.** Said payment shall be in the form of a
11 cashier's check made payable to the Department of Real Estate. **The investigative and**
12 **enforcement costs must be delivered to the Department of Real Estate, Flag Section at P.O.**
13 **Box 137013, Sacramento, CA 95813-7013. Payment of investigation and enforcement costs**
14 **should not be made until the Stipulation has been approved by the Commissioner.** If
15 Respondents fail to satisfy this condition in a timely manner as provided for herein, Respondents'
16 real estate licenses shall automatically be suspended until payment is made in full, or until a
17 decision providing otherwise is adopted following a hearing held pursuant to this condition.

18 5. Respondent OSBORNE shall, within six (6) months after the effective date of this
19 Decision and Order, take and pass the Professional Responsibility Examination administered by
20 the Department, including the payment of the appropriate examination fee. If Respondent
21 OSBORNE fails to satisfy this condition, Respondent OSBORNE's real estate license and license
22 rights shall automatically be suspended until he passes the examination.

23 6. Respondent's signature indicates full agreement to the terms of this Stipulation and
24 Agreement and to the terms set forth herein.

25
26 06/21/2022
27 DATED _____



Laurence D. Haveson
Counsel for Complainant

1 * * *

2 EXECUTION OF THE STIPULATION

3 We have read the Stipulation and Agreement. We understand its terms and they are
4 agreeable and acceptable to us. We understand that we are waiving rights given to us by the
5 California Administrative Procedure Act (including but not limited to Sections 11506, 11508,
6 11509 and 11513 of the Government Code), and we willingly, intelligently and voluntarily waive
7 those rights, including the right of requiring the Commissioner to prove the allegations in the
8 Accusation at a hearing at which we would have the right to cross-examine witnesses against us
9 and to present evidence in defense and mitigation of the charges.

10 Respondents can signify acceptance and approval of the terms and conditions of this
11 Stipulation and Agreement by electronically e-mailing a copy of the signature pages, as actually
12 signed by Respondents, to the Department. Respondents agree, acknowledge, and understand that
13 by electronically sending to the Department an electronic copy of Respondents' actual signatures,
14 as they appear on the Stipulation, that receipt of the emailed copy by the Department shall be as
15 binding on Respondents as if the Department had received the original signed Stipulation. By
16 signing this Stipulation, Respondents understand and agree that Respondents may not withdraw
17 their agreement or seek to rescind the Stipulation prior to the time the Commissioner considers
18 and acts upon it or prior to the effective date of the Stipulation and Order.

19 MAILING

20 Respondents and their counsel shall, within five (5) business days from signing the
21 Stipulation, mail the original signed signature page(s) of the Stipulation herein to Laurence
22 Haveson, Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Room 350,
23 Los Angeles, California 90013-1105.

24 ///

25 ///

26 ///

27 ///

28 ///

1 Respondents' signatures below constitute acceptance and approval of the terms and
2 conditions of this Stipulation. Respondents agree, acknowledge, and understand that by signing
3 this Stipulation Respondents are bound by its terms as of the date of such signature and that this
4 agreement is not subject to rescission or amendment at a later date except by a separate Decision
5 and Order of the Real Estate Commissioner.

6
7 DATED: 6-21-22


Respondent SMART CHOICE REALTY &
MORTGAGE FINANCE, INC.

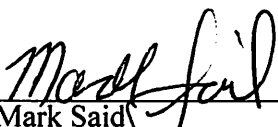
9 By (Printed Name): Harold Osborne

10 Title: OWNER

11
12 DATED: 6-21-22


Respondent HAROLD JOSEPH OSBORNE

13
14
15 DATED: 6/22/22


Mark Said
Attorney for Respondents SMART CHOICE REALTY
18 & MORTGAGE FINANCE, INC. and HAROLD
19 JOSEPH OSBORNE
Approved as to Form

20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

* * *

The foregoing Stipulation and Agreement in Settlement and Order is hereby adopted by me as my Decision in this matter and shall become effective at 12 o'clock noon on October 11, 2022.

IT IS SO ORDERED 9.12.22, 2022.

DOUGLAS R. McCAULEY
REAL ESTATE COMMISSIONER

Douglas R. McCauley