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

Telephone: (916) 227-0789

FILED

MAY 24 2010

DEPARTMENT OF REAL ESTATE

By R. Henry

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of KEVIN JAMES ROBERTS, Respondent.	NO. H-10715 SF STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER

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

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

///

///

2. Respondent has received, read and understands the Statement to Respondent, the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate in this proceeding.

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

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

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

///

///

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

DETERMINATION OF ISSUES

I

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

ORDER

I

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

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

A. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

B. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Order. Should such a determination

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

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

A. Said payment shall be in the form of a cashier's check or certified check made payable to the Recovery Account of the Real Estate Fund. Said check must be delivered to the Department prior to the effective date of the Order in this matter.

B. No further cause for disciplinary action against the Real Estate licenses of said Respondent occurs within two (2) years from the effective date of the decision in this matter.

C. If Respondent fails to pay the monetary penalty as provided above prior to the effective date of this Order, the stay of the suspension shall be vacated as to Respondent and the order of suspension shall be immediately executed, under this Paragraph I of this Order, in which event Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for the money paid to the Department under the terms of this Order.

D. If Respondent pays the monetary penalty and any other moneys due under this Stipulation and Agreement and if no further cause for disciplinary action against the real estate licenses of Respondent occurs within two (2) years from the effective date of this Order, the entire stay hereby granted under Paragraphs I shall become permanent.

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

DATED: 4/20/2010

KENNETH C. ESPELL, Counsel
DEPARTMENT OF REAL ESTATE

* * *

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

DATED: 4/17/2010

KEVIN JAMES ROBERTS
Respondent

///

///

///

///

///

///

///

///

* * *

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 1 4 2010.

IT IS SO ORDERED 5/20/10.

JEFF DAVI
Real Estate Commissioner

BY: Barbara J. Bigby
Chief Deputy Commissioner

JOHN VAN DRIEL (SBN 84056)
Department of Real Estate
P. O. Box 187000
Sacramento, CA 95818-7000

Telephone: (916) 227-0789
-or- (916) 227-0787 (Direct)

FILED

JUN 30 2009

DEPARTMENT OF REAL ESTATE

By

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of KEVIN JAMES ROBERTS, Respondent.	)	NO. H-10715 SF ACCUSATION

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

1

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

2

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

///

///

3

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

4

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

5

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

6

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

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

7

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

8

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

9

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

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

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

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

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

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

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 Respondent 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.

E. J. HABERER II
Deputy Real Estate Commissioner

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