SACTO Flag

Department of Real Estate
320 W. 4TH Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982

FILED

FEB 28 2012

DEPARTMENT OF REAL ESTATE
BY: Guadalupe Valencia

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of PROTEQUITY INC; dba Mortgage Modification Network and DAVID G. ARNOLD, individually and formerly as designated officer of Protequity Inc, Respondents.	No. H-37320 LA 2011080779 STIPULATION AND AGREEMENT

It is hereby stipulated by and between Respondent DAVID G. ARNOLD, represented by Joshua A. Rosenthal, Esq. and the Complainant, acting by and through James A. Demus, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation ("Accusation") filed on June 7, 2011, 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 ("Stipulation").

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. Respondent timely filed a Notice of Defense pursuant to Section 11506 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 thereby waives the 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 his 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 interest of expedience and economy, Respondent chooses not to contest these allegations, but to remain silent and understand 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. This Stipulation is made for the purpose of reaching an agreed disposition of this proceeding and is expressly limited to this proceeding and any other proceeding or case in which the Department of Real Estate ("Department"), the state or federal government, or any agency of this state, another state or federal government is a party.

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

7. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation 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 but do

constitute a bar, estoppel and merger as to any allegations actually contained in the Accusation against Respondent herein.

8. Respondent understands that by agreeing to this Stipulation, Respondent agrees to pay, pursuant to Business and Professions Code Section 10148, the cost of the audit which led to this disciplinary action. The cost of said audit was $3,750.

9. Respondent has received, read, and understands the "Notice Concerning Costs of Subsequent Audit." Respondent further understands that by agreeing to this Stipulation, the findings set forth below in the Determination of Issues become final, and the Commissioner may charge Respondent for the cost of any subsequent audit conducted pursuant to Business and Professions Code Section 10148 to determine if the violations have been corrected.

DETERMINATION OF ISSUES

By reason of the foregoing, it is stipulated and agreed that the following determination of issues shall be made:

The conduct of DAVID G. ARNOLD as described in Paragraph 4 above, is in violation of Business and Professions Code ("Code") Sections 10137, 10145, 10159.5, 10161.8 and 10176(e) and provides a basis for discipline of Respondent's license and license rights as violations of the Real Estate law pursuant to Code Sections 10137, 10176(e), 10177(d), 10177(g) and 10177(h).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondent DAVID G. ARNOLD under the Real Estate Law are suspended for a period of one hundred twenty (120) days from the effective date of this Decision; provided, however, that ninety (90) days of said suspension, shall be stayed for two (2) years upon the following terms and conditions:

A.

1. 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

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

B.

If Respondent petitions, an additional 30 days shall be stayed upon condition that:

1. Respondent pays a monetary penalty pursuant to Section 10175.2 of the Code at the rate of $100 for each day of the suspension for a total monetary penalty of $3,000.

2. 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 received by the Department prior to the effective date of the Decision in this matter.

3. No further cause for disciplinary action against the real estate license of Respondent occurs within two years from the effective date of the Decision in this matter.

4. If Respondent fails to pay the monetary penalty in accordance with the terms and conditions of the Decision, the Commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the Respondent shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the Department under the terms of this Decision.

5. If Respondent pays the monetary penalty and if no further cause for disciplinary action against the real estate license of Respondent occurs within two years from the effective date of the Decision, the stay hereby granted shall become permanent.

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II.

Pursuant to Section 10148 of the Business and Professions Code, Respondent shall pay the Commissioner's reasonable cost for: a) the audit which led to this disciplinary action and b) a subsequent audit to determine if Respondent has corrected the trust fund violations found in the Determination of Issues. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work and per diem. Respondent shall pay such costs within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities. The Commissioner may, in her discretion, vacate and set aside the stay order, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The vacation and the set aside of the stay shall remain in effect until payment is made in full, or until Respondent enters into an agreement satisfactory to the Commissioner to provide for payment.

III

Respondent DAVID G. ARNOLD shall within six (6) months from the effective date of the Decision herein, take and pass the

Professional Responsibility Examination administered by the Department including the payment of the appropriate examination fee. If Respondent DAVID G. ARNOLD fails to satisfy this condition, the Commissioner may order suspension of Respondent DAVID G. ARNOLD's license until Respondent passes the examination.

IV

All licenses and licensing rights of Respondent DAVID G. ARNOLD are indefinitely suspended unless or until Respondent provides proof satisfactory to the Commissioner, of having taken and successfully completed the continuing education course on trust fund accounting and handling specified in paragraph (3) of subdivision (a) of Section 10170.5 of the Business and Professions Code. Proof of satisfaction of this requirement includes evidence that respondent has successfully completed the trust fund account and handling continuing education course within 120 days prior to the effective date of the Decision in this matter.

DATED: 1/19/12

JAMES A. DEMUS, Counsel for
the Department of Real Estate

EXECUTION OF THE STIPULATION

I have read the Stipulation and discussed it with my counsel. 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.

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation by faxing a copy of its signature page, as actually signed by Respondent, to the Department at the following telephone/fax number: James A. Demus at (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation.

DATED: 1/13/12

DAVID G. ARNOLD, Respondent

DATED: 1/17/12

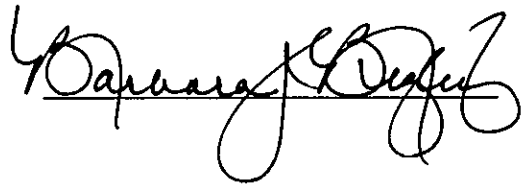
JOSHUA A. ROSENTHAL
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondent DAVID G. ARNOLD and shall become effective at 12 o'clock noon on MAR 29 2012.

IT IS SO ORDERED 2/21/12.

BARBARA J. BIGBY
Acting Real Estate Commissioner



SACTO Flag

FILED

FEB 28 2012

DEPARTMENT OF REAL ESTATE
BY: Gwendolyn Valencia

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of PROTEQUITY INC, dba Mortgage Modification Network and DAVID G. ARNOLD, individually and formerly as designated officer of Protequity Inc, Respondents.	No. H-37320 LA L-2011080779

ORDER ACCEPTING VOLUNTARY SURRENDER OF REAL ESTATE LICENSE

On June 07, 2011, an Accusation was filed in this matter against Respondent PROTEQUITY INC. On January 12, 2012, Respondent petitioned the Commissioner to voluntarily surrender its real estate broker license(s) pursuant to Section 10100.2 of the Business and Professions Code.

IT IS HEREBY ORDERED that Respondent PROTEQUITY INC 's petition for voluntary surrender of its real estate broker license(s) is accepted as of the effective date of this Order as set forth below, based upon the understanding and agreement expressed in Respondent's Declaration dated January 12, 2012

(attached as Exhibit "A" hereto). Respondent's license certificate(s), pocket card(s) and any branch office license certificate(s) shall be sent to the below listed address so that they reach the Department on or before the effective date of this Order:

DEPARTMENT OF REAL ESTATE
Attn: Licensing Flag Section
P. O. Box 187000
Sacramento, CA 95818-7000

This Order shall become effective at 12 o'clock noon on MAR 19 2012.

DATED: 2/21/12.

BARBARA J. BIGBY
Acting Real Estate Commissioner

Exhibit "A"

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of PROTEQUITY INC; dba Mortgage Modification Network and DAVID G. ARNOLD, individually and formerly as designated officer of Protequity Inc, Respondents.	No. H-37320 LA L-2011080779

DECLARATION

My name is David G. Arnold and I am authorized and empowered to sign this declaration on behalf of PROTEQUITY INC, which is licensed as a real estate broker and/or has license rights with respect to said license. PROTEQUITY INC is represented in this matter by Joshua A. Rosenthal, Attorney at Law.

In lieu of proceeding in this matter in accordance with the provisions of the Administrative Procedure Act (Sections 11400 et seq., of the Government Code) PROTEQUITY INC wishes to voluntarily surrender its real estate license issued by the

Department of Real Estate ("Department"), pursuant to Business and Professions Code Section 10100.2.

I understand that PROTEQUITY INC, by so voluntarily surrendering its license, can only have it reinstated in accordance with the provisions of Section 11522 of the Government Code. I also understand that by so voluntarily surrendering its license, PROTEQUITY INC agrees to the following:

The filing of this Declaration shall be deemed as its petition for voluntary surrender. It shall also be deemed to be an understanding and agreement by PROTEQUITY INC that it waives all rights it has to require the Commissioner to prove the allegations contained in the Accusation filed in this matter at a hearing held in accordance with the provisions of the Administrative Procedure Act (Government Code Sections 11400 et seq.), and that it also waives other rights afforded to it in connection with the hearing such as the right to discovery, the right to present evidence in defense of the allegations in the Accusation and the right to cross-examine witnesses. I further agree on behalf of PROTEQUITY INC, that upon acceptance by the Commissioner, as evidenced by an appropriate order, all affidavits and all relevant evidence obtained by the Department in this matter prior to the Commissioner's acceptance, and all allegations contained in the Accusation filed in the Department Case No. H-37320 LA, may be considered by the Department to be true and correct for the purpose of deciding whether or not to grant reinstatement of PROTEQUITY INC's license pursuant to Government Code Section 11522.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that I am acting freely and voluntarily on behalf of PROTEQUITY INC, to surrender its license and all license rights attached thereto.

1/12/12 Lotus Beach Co

Date and Place

PROTEQUITY INC by
DAVID G. ARNOLD

FILED

JUN 07 2011

DEPARTMENT OF REAL ESTATE
BY: [signature]

JAMES DEMUS, Counsel (SBN 225005)
Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, CA 90013-1105

Telephone: (213) 576-6982
-or- (213) 576-6910 (Direct)

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of PROTEQUITY INC, dba Mortgage Modification Network and DAVID G. ARNOLD, individually, and formerly designated officer of Protequity Inc, Respondents.	No. H-37320 LA ACCUSATION

The Complainant, Maria Suarez, a Deputy Real Estate Commissioner of the State of California, for cause of accusation against PROTEQUITY INC, dba Mortgage Modification Network and DAVID G. ARNOLD, individually and formerly designated officer of Protequity Inc, alleges as follows:

1.

The Complainant, Maria Suarez, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against PROTEQUITY INC ("PI'),

dba Mortgage Modification Network ("MMN") and DAVID G. ARNOLD ("ARNOLD").

2.

PI is presently licensed and/or has license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code, hereinafter "Code") as a real estate corporation. It was first licensed as a corporation on February 4, 2009. From March 27, 2009 to March 22, 2010, PI had the fictitious business name "MMN" licensed with the Department.

3.

ARNOLD is presently licensed and/or has license rights under the Real Estate Law as a real estate broker. ARNOLD was the designated officer of PI from February 4, 2009 to August 23, 2010.

4.

Pursuant to Code Section 10159.2, Respondent ARNOLD was responsible for the supervision and control of the activities conducted on behalf of Respondent PI and by its officers and employees as necessary to secure full compliance with the provisions of the Real Estate Law, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

5.

At all times material herein, Respondents 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 Section 10131(d) of the Code, including soliciting borrowers and lenders and negotiating loans on real property.

FIRST CAUSE OF ACCUSATION

(Advance Fee Violations)

6.

Dominic and Tina Ryan Transaction

On or about September 19, 2009, Dominic and Tina Ryan ("the Ryans") entered into a loan modification agreement with PI, in which PI offered mortgage loan modification services to the Ryans in exchange for the payment of advance fees by the Ryans. PI collected advance fees from the Ryans after October 11, 2009. PI never finalized a loan modification for the Ryans.

7.

Brad Sylvester Transaction

On or about July 26, 2009, Brad Sylvester ("Sylvester") entered into a loan modification agreement with PI, in which PI offered mortgage loan modification services to Sylvester in exchange for the payment of advance fees by Sylvester. PI collected advance fees from Sylvester after October 11, 2009. PI never finalized a loan modification for Sylvester.

8.

Effective on October 11, 2009, Code Section 10085.6 made it unlawful for any licensee to collect fees for mortgage loan modification services until the licensee has fully performed every contracted service. The conduct, acts and/or omissions of Respondents PI and ARNOLD, as alleged above, subjects their real

estate licenses and license rights to suspension or revocation pursuant to Sections 10085.6, 10177(d) and/or 10177(g) of the Code.

9.

The conduct, acts and/or omissions of Respondent ARNOLD in failing to ensure full compliance with the Real Estate Law is in violation of Section 10159.2 of the Code and subjects his real estate license and license rights to suspension or revocation pursuant to Sections 10177(d), 10177(g) and/or 10177(h) of the Code.

SECOND CAUSE OF ACCUSATION

(AUDIT INVESTIGATION)

10.

On March 22, 2010, the Department completed an audit examination of the books and records of PI pertaining to the activities described in Paragraph 5 which require a real estate license. The audit examination covered a period of time from February 4, 2009 to January 31, 2010. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and as more fully discussed in Audit Report LA090171 and the exhibits and workpapers attached to said audit report.

VIOLATIONS OF THE REAL ESTATE LAW

11.

In the course of activities described in Paragraph 5 above and during the examination period described in Paragraph

10, Respondents PI and ARNOLD acted in violation of the Code and the Regulations in that:

(a) PI commingled fees and commissions in the same bank account. This bank account also had unaccounted funds totaling $10,999.36, in violation of Code Sections 10145, 10176(e) and Regulation 2835(b).

(b) The control records for two bank accounts that were maintained for receipt and disbursement of advance fees were incomplete and inaccurate, in violation of Code Section 10145 and Regulation 2831.

(c) PI did not maintain a separate record for each beneficiary of trust funds in connection with loan modification activity, in violation of Code Section 10145 and Regulation 2831.1.

(d) PI did not maintain a monthly trust fund reconciliation of all separate records to the columnar records of trust funds received and disbursed, in violation of Code Section 10145 and Regulation 2831.2.

(e) The bank account used for all trust funds received and disbursed was not designated as a trust account on the bank signature card, in violation of Code Section 10145 and Regulation 2832.

(f) PI collected advance fees from principals without maintaining and providing an accounting to the principals, showing services rendered, identification of the trust account into which the advance fees were deposited and details of how the funds were disbursed, in violation of Regulation 2972.

(g) PI continued to collect advance fees for mortgage loan modification services after October 11, 2009, in violation of Code Section 10085.6.

(h) PI failed to notify the Department of the employment of four salespersons within five days, in violation of Code Section 10161.8 and Regulation 2752.

(i) PI employed and compensated unlicensed employees to negotiate loan modifications for borrowers, in violation of Code Section 10137.

(j) PI used the unlicensed fictitious business name "MMN Financial Services" in connection with loan modification activity, without first obtaining a license from the Department bearing the fictitious business name, in violation of Code Section 10159.5 and Regulation 2731.

12.

The conduct of Respondents PI and ARNOLD, described in Paragraph 11, above, violated the Code and the Regulations as set forth below:

PARAGRAPH	PROVISIONS VIOLATED
11(a)	Code Section 10145, 10176(e) and Regulation 2835(b)
11(b)	Code Section 10145 and Regulation 2831
11(c)	Code Section 10145 and Regulation 2831.1

11(d)	Code Section 10145 and Regulation 2831.2
11(e)	Code Section 10145 and Regulation 2832
11(f)	Regulation 2972
11(g)	Code Section 10085.6
11(h)	Code Section 10161.8 and Regulation 2752
11(i)	Code Section 10137
11(j)	Code Section 10159.5 and Regulation 2731.

The foregoing violations constitute cause for the suspension or revocation of the real estate license and license rights of PI and ARNOLD, under the provisions of Code Sections 10137, 10176(e), 10177(d) and/or 10177(g).

NEGLIGENCE

13.

The overall conduct of Respondents PI and ARNOLD constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to Code Section 10177(g).

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SUPERVISION AND COMPLIANCE

14.

The overall conduct of Respondent ARNOLD constituted a failure on his part, as a former officer designated by a corporate broker licensee, to exercise reasonable supervision and control over the licensed activities of PI as required by Code Section 10159.2, and to keep PI in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of ARNOLD pursuant to the provisions of Code Sections 10177(d), 10177(g) and 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 PROTEQUITY INC, dba Mortgage Modification Network and DAVID G. ARNOLD 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 April, 2011.

MARIA SUAREZ
Deputy Real Estate Commissioner

cc: Protequity Inc
David G. Arnold
Maria Suarez
Sacto.
OAH