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Department of Real Estate  
320 West Fourth Street, #350  
Los Angeles, California 90013

**FILED**

SEP 21 2012

DEPARTMENT OF REAL ESTATE

BY: C. H.

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \*

In the Matters of the Accusation against	)	DRE Case No. H-37524 LA
	)	OAH Case No. L-2011120946
DAVID ARTHUR CRUICKSHANK,	)	
	)	
Respondent.	)	
	)	
_____	)	
In the Matter of the Order to Desist and Refrain to	)	DRE Case No. H-37577 LA
	)	OAH Case No. L-2011120947
DAVID ARTHUR CRUICKSHANK.	)	
	)	<u>STIPULATION AND</u>
	)	<u>AGREEMENT</u>
	)	

It is hereby stipulated by and between DAVID ARTHUR CRUICKSHANK (sometimes referred to herein as "Respondent"), represented in this matter by Steven C. Vondran, Attorney at Law, and the Complainant, acting by and through Martha J. Rosett, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on September 14, 2011 and the Desist and Refrain Order filed on October 10, 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

1 (APA), shall instead and in place thereof be submitted solely on the basis of the provisions of  
2 this Stipulation and Agreement.

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

6           3. On October 26, 2011, Respondent filed Notices of Defense pursuant to  
7 Section 11506 of the Government Code for the purpose of requesting a hearing on the  
8 allegations in the Accusation and the Desist and Refrain Order, which included a request for  
9 consolidation of those matters for hearing. In order to effectuate this settlement, Respondent  
10 hereby freely and voluntarily withdraws said Notices of Defense. Respondent acknowledges  
11 that he understands that by withdrawing said Notices of Defense, he will thereby waive his  
12 right to require the Commissioner to prove the allegations in the Accusation at a contested  
13 hearing held in accordance with the provisions of the APA and that he will waive other rights  
14 afforded to him in connection with the hearing such as the right to present evidence in defense  
15 of the allegations in the Accusation and the right to cross-examine witnesses. Respondent  
16 further understands that he will also waive his right to require the Commissioner to prove the  
17 allegations in the Desist and Refrain Order at a hearing, and will waive other rights afforded to  
18 him in connection with the hearing.

19           4. Respondent, pursuant to the limitations set forth below, although not  
20 admitting or denying the truth of the allegations, will not contest the factual allegations  
21 contained in the Accusation and the Desist and Refrain Order filed in this proceeding, and the  
22 Real Estate Commissioner shall not be required to provide further evidence of such allegations.

23           5. It is understood by the parties that the Real Estate Commissioner may adopt  
24 the Stipulation and Agreement as his Decision in this matter, thereby imposing the penalty and  
25 sanctions on Respondent's real estate license and license rights as set forth in the below  
26 "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation  
27 and Agreement, it shall be void and of no effect, and Respondent shall retain the right to a

1 hearing and proceeding on the Accusation and the Desist and Refrain Order under all the  
2 provisions of the APA and shall not be bound by any stipulation or waiver made herein.

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

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

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations and waivers and solely for the purpose  
15 of settlement of the pending Accusation without a hearing, it is stipulated and agreed that the  
16 following Determination of Issues shall be made:

17 The conduct, acts or omissions of Respondent DAVID ARTHUR  
18 CRUICKSHANK, as set forth in the Accusation constitute cause to suspend or revoke the real  
19 estate license and licensing rights of Respondent DAVID ARTHUR CRUICKSHANK  
20 pursuant to Business and Professions Code Sections 10130 and 10177(d).

21 ORDER

22 WHEREFORE, THE FOLLOWING ORDER is hereby made:

23 1. All real estate licenses and license rights of Respondent DAVID ARTHUR  
24 CRUICKSHANK are publicly reprovved pursuant to Section 495 of the Business and  
25 Professions Code.

26 2. Respondent DAVID ARTHUR CRUICKSHANK shall, within sixty (60)  
27 days of the effective date of this Decision, submit to the Department, through its counsel,

1 Martha J. Rosett, a money order in the amount of \$2,500.00 made payable to Eric Iverson as  
2 restitution. If Respondent fails to satisfy this condition, the Commissioner may order  
3 suspension of Respondent's license until Respondent provides proof to the Department of  
4 restitution to Mr. Iverson.

5  
6 DATED: 6/25/12

  
MARTHA J. ROSETT  
Counsel for Complainant

8 \* \* \*

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

17 Respondent may signify acceptance and approval of the terms and conditions of  
18 this Stipulation and Agreement by faxing a copy of the signature page, as actually signed by  
19 Respondent, to the Department at the following fax number (213) 576-6917. Respondent agrees,  
20 acknowledges and understands that by electronically sending to the Department a fax copy of his  
21 actual signature as it appears on the Stipulation that receipt of the faxed copy by the Department  
22 shall be as binding on Respondent as if the Department had received the original signed  
23 Stipulation and Agreement.

24  
25 DATED: 6-25-12

  
DAVID ARTHUR CRUICKSHANK  
Respondent

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DATED: 6/25/12

  
\_\_\_\_\_  
STEVEN C. VONDRAN, ESQ.  
Attorney for Respondent

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The foregoing Stipulation and Agreement is hereby adopted as my Decision in this matter and shall become effective at 12 o'clock noon on October 11, 2012.

IT IS SO ORDERED 9/11/2012

  
\_\_\_\_\_  
By WAYNE S. BELL  
Chief Counsel



1 licensed by the Department in any capacity.

2 3.

3 Fair Lending Review LLC ("FLR") is a Nevada limited liability company doing  
4 business in California, with offices at 3185 Airway, Suite C-2, Costa Mesa, CA 92626. FLR is  
5 not now and has never been licensed by the Department in any capacity.

6 4.

7 During a period of time beginning on or before February 5, 2009, and continuing  
8 through on or after July 9, 2009, Respondent engaged in the business of, acted in the capacity of,  
9 advertised or assumed to act as a real estate broker in the State of California, within the meaning  
10 of Business and Professions Code ("Code") Sections 10131(d) and 10131.2, for or in expectation  
11 of compensation. Respondent, in concert with affiliated unlicensed businesses and individuals,  
12 including but not necessarily limited to FLR, advertised and solicited borrowers on loans secured  
13 by real property and offered to negotiate and modify terms of loans and prevent foreclosure.  
14 Respondent also collected advance fees within the meaning of Code Sections 10026 and 10131.2.  
15

16  
17 Unlicensed Loan Modification Activity

18 Raymond and Trudi E.

19 5.

20 On or about April 1, 2009, Raymond and Trudi E. entered into an agreement with  
21 FLR, by and through Respondent, for loan modification services in connection with mortgage  
22 loans secured by their home. FLR, doing business out of its office in Costa Mesa, California,  
23 promised to assist Raymond and Trudi E. in avoiding foreclosure and in negotiating with lenders  
24 to modify the terms of the loans. In April of 2009, Raymond and Trudi E. paid FLR in excess of  
25 \$1,900.00 as an up front fee towards loan services.  
26  
27

6.

1  
2 Between April 1, 2009, and on or after August 24, 2009, Raymond and Trudi E.  
3 engaged in numerous communications with Respondent and other agents and representatives of  
4 FLR and/or its affiliates. Respondent held himself out as a branch manager for FLR and stated  
5 that Raymond and Trudi E.'s file and loan documents were under review by their lender as part  
6 of FLR's loan negotiation process. However, Raymond and Trudi E. discovered that this was  
7 not true. FLR failed to perform services as promised and the property went into foreclosure.  
8 FLR and CRUICKSHANK refused to refund or account for any of the fees paid.  
9

10 Eric I.

11 7.

12 On or before February 5, 2009, Eric I. entered into an agreement with FLR and its  
13 affiliates for loan modification services in connection with mortgage loans secure by his home.  
14 FLR, through Respondent as its agent, promised to assist Eric I. in negotiating with lenders to  
15 modify the terms of the loans. Eric I. paid FLR \$3,000.00 in up front fees towards loan services.  
16

17 8.

18 Eric I. engaged in numerous communications with FLR, through Respondent and  
19 other agents and representatives. FLR failed to perform any services as promised. FLR and  
20 Respondent refused to refund or account for any of the fees paid.

21 Thomas and Bonita S.

22 9.

23  
24 On or about July 6, 2009, Thomas and Bonita S. entered into an agreement with  
25 FLR and its affiliates for loan modification and related services in connection with mortgage  
26 loans secured by their home. Respondent and others, as agents and/or affiliates of FLR,  
27

1 promised to assist Thomas and Bonita S. in negotiating with lenders to modify the terms of the  
2 loans. Thomas and Bonita S. paid FLR, through Respondent, \$2327.00 in up front fees towards  
3 loan services.

4 10.

5 As set forth above, Respondent, as an agent of FLR, advertised, solicited and  
6 entered into loan modification agreements with borrowers in expectation of compensation when  
7 he was not licensed by the Department as a broker or as a salesperson employed by a broker.  
8 Respondent also solicited advance fees from these borrowers. Respondent unlawfully engaged  
9 in activities requiring a real estate license prior to October 28, 2010, and was therefore not  
10 licensed by the Department in any capacity.

11 11.

12 No loan modification, loss mitigation or foreclosure avoidance services were ever  
13 provided to the borrowers listed above by Respondent and/or any of his associates and business  
14 affiliates, or by any lawyers or agents affiliated with those individuals or entities.

15 12.

16 The advance fees for loan modification services collected from borrowers  
17 described above, were not collected pursuant to written agreements submitted to or reviewed by  
18 the Department prior to use.

19 13.

20 At the time he collected advance fees from consumers, including the advance fees  
21 collected from the consumers set forth in Paragraphs 5 through 9 above, Respondent was not  
22 licensed as a broker or as a salesperson employed by a supervising employing broker. As such,  
23 Respondent was not authorized to conduct activities requiring a real estate broker license  
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1 independently, or as an employee or agent of any other broker or company, licensed or  
2 unlicensed. Respondent was not authorized to conduct licensed activities as an agent of FLR,  
3 and he was not authorized to receive compensation for acting as their agent.

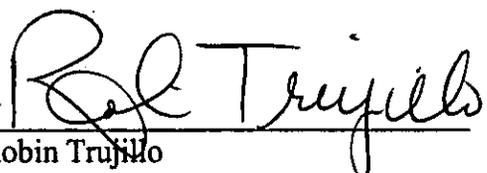
4 14.

5 The conduct, acts and/or omissions of Respondent DAVID ARTHUR  
6 CRUICKSHANK in soliciting borrowers and collecting advance fees from borrowers to perform  
7 acts requiring a real estate license constitutes grounds to discipline the license and license rights  
8 of Respondent DAVID ARTHUR CRUICKSHANK pursuant to Code Sections 10130, 10177(d),  
9 and/or 10177(j).  
10

11 WHEREFORE, Complainant prays that a hearing be conducted on the allegations  
12 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary  
13 action against all licenses and/or license rights of Respondent DAVID ARTHUR  
14 CRUICKSHANK under the Real Estate Law and for such other and further relief as may be  
15 proper under other applicable provisions of law.  
16

17 Dated at Los Angeles, California

18 this 7 day of September, 2011.  
19

20   
21 Robin Trujillo  
22 Deputy Real Estate Commissioner  
23

24  
25 cc: David Arthur Cruickshank  
26 Robin Trujillo  
27 Sacto.