

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4
5 Telephone: (916) 227-0789
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FILED
JAN 20 2005

DEPARTMENT OF REAL ESTATE

By K. Contreras

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

11 * * *

12 In the Matter of the Accusation of)
13 HARTLEB-PRASAD CORP.,) NO. H-4034 SAC
14 HEMANT KUMAR PRASAD, and) STIPULATION AND AGREEMENT
15 ROHIT SHARMA,)
16 Respondents.)

17 It is hereby stipulated by and between HARTLEB-PRASAD
18 CORP., HEMANT KUMAR PRASAD, and ROHIT SHARMA (hereafter
19 Respondents) represented by Edward W. Suman, Attorney at Law,
20 and the Complainant, acting by and through Deidre L. Johnson,
21 Counsel for the Department of Real Estate, as follows for the
22 purpose of settling and disposing the Accusation filed on
23 June 18, 2004, in this matter:

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and Respondents
26 at a formal hearing on the Accusation, which hearing was to be
27 held in accordance with the provisions of the Administrative

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

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

7 3. On June 28, 2000, Respondents filed their Notice
8 of Defense pursuant to Section 11505 of the Government Code for
9 the purpose of requesting a hearing on the allegations in the
10 Accusation. Respondents hereby freely and voluntarily withdraw
11 said Notice of Defense. Respondents acknowledge that they
12 understand that by withdrawing said Notice of Defense they will
13 each thereby waive their rights to require the Commissioner to
14 prove the allegations in the Accusation at a contested hearing
15 held in accordance with the provisions of the APA, and that they
16 will each waive other rights afforded to them in connection with
17 the hearing, such as the right to present evidence in defense of
18 the allegations in the Accusation and the right to cross-examine
19 witnesses.

20 4. Respondents, pursuant to the limitations set forth
21 below, hereby admit that the factual allegations pertaining to
22 them in Paragraphs I through VI of the Accusation filed in this
23 proceeding are true and correct and the Real Estate Commissioner
24 shall not be required to provide further evidence of such
25 allegations.

26 5. Without admitting the truth of the allegations
27 pertaining to them contained in the remaining paragraphs of the

1 Accusation, Respondents stipulate that they will not interpose a
2 defense thereto. This Stipulation is based on the factual
3 allegations as to Respondents contained in the Accusation. In
4 the interests of expedience and economy, Respondents choose not
5 to contest these allegations, but to remain silent and understand
6 that, as a result thereof, these factual allegations, without
7 being admitted or denied, will serve as the basis for the
8 disciplinary action stipulated to herein. The Real Estate
9 Commissioner shall not be required to provide further evidence
10 to prove said factual allegations.

11 6. It is understood by the parties that the Real
12 Estate Commissioner may adopt the Stipulation and Agreement as
13 the decision in this matter thereby imposing the penalties and
14 sanctions on the real estate licenses and license rights of
15 Respondents, and each of them, as set forth in the below "Order".
16 In the event that the Commissioner in his discretion does not
17 adopt the Stipulation and Agreement, it shall be void and of no
18 effect, and Respondents shall retain the rights to a hearing and
19 proceeding on the Accusation under all the provisions of the APA
20 and shall not be bound by any admission or waiver made herein.

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

1 DETERMINATION OF ISSUES

2 By reason of the foregoing stipulations, admissions and
3 waivers and solely for the purpose of settlement of the pending
4 Accusation without a hearing, it is stipulated and agreed that
5 the following determination of issues shall be made by the
6 Commissioner:

7 The acts and/or omissions of Respondents HARTLEB-PRASAD
8 CORP., HEMANT KUMAR PRASAD, and ROHIT SHARMA violate Section
9 10240 of the California Business and Professions Code (hereafter
10 the Code), and constitute grounds for disciplinary action against
11 the real estate license(s) and license rights of Respondents
12 under the provisions of Sections 10177(d) and 10177(g) of the
13 Code.

14 ORDER

15 I

16 A. All real estate licenses and license rights of
17 Respondents HARTLEB-PRASAD CORP., and HEMANT KUMAR PRASAD shall
18 be suspended for a period of thirty (30) days from the effective
19 date of the Decision.

20 B. If Respondents HARTLEB-PRASAD CORP., and HEMANT
21 KUMAR PRASAD each petition the Department in writing pursuant
22 to Section 10175.2 of the Code prior to the effective date of
23 the Decision, the thirty (30) days of suspension as to each
24 Respondent shall be stayed upon condition that:

- 25 (1) Each petitioning Respondent shall pay a monetary
26 penalty pursuant to Section 10175.2 of the Code at
27 the rate of \$50.00 for each day of suspension for

1 a total monetary penalty of \$1,500.00 as to each
2 Respondent, or \$3,000.00 for both.

3 (2) Said payment(s) shall be in the form of a
4 cashier's check(s) or certified check(s) made
5 payable to the Recovery Account of the Real Estate
6 Fund. Said check(s) must be actually received by
7 the Department prior to the effective date of the
8 Decision in this matter.

9 (3) No further cause for disciplinary action against
10 the real estate license of each petitioning
11 Respondent occurs within one (1) year from the
12 effective date of the Decision.

13 (4) If Respondents HARTLEB-PRASAD CORP., and HEMANT
14 KUMAR PRASAD each fail to pay the monetary penalty
15 in accordance with the terms and conditions of the
16 Decision, the Commissioner may, without a hearing,
17 order the immediate execution of all or any part
18 of the stayed suspension, in which event, such
19 Respondent shall not be entitled to any repayment
20 nor credit, prorated or otherwise, for money
21 paid to the Department under the terms of this
22 Decision.

23 (5) If the Real Estate Commissioner determines that
24 further cause for disciplinary action against the
25 real estate licenses of HARTLEB-PRASAD CORP.,
26 and/or HEMANT KUMAR PRASAD has occurred within one
27 (1) year from the effective date of the Decision,

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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 one (1) year from the effective date of the Decision.

(4) Respondent ROHIT SHARMA 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.

(5) If Respondent ROHIT SHARMA 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, 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.

(6) If the Real Estate Commissioner determines that further cause for disciplinary action against Respondent's license has occurred within

1 one (1) year from the effective date of the
2 Decision, the stay of suspension hereby granted,
3 or such portion of the stay as the Real Estate
4 Commissioner shall deem appropriate, shall be
5 vacated.

6 (7) If Respondent ROHIT SHARMA pays the monetary
7 penalty and if no further cause for disciplinary
8 action against his real estate license occurs
9 within one (1) year from the effective date of
10 the Decision, the stay hereby granted in this
11 condition shall become permanent.

12
13
14 November 19, 2004
15 DATED

Deidre L. Johnson
16 DEIDRE L. JOHNSON
17 Counsel for the Complainant

18 * * *

19
20 I have read the Stipulation and Agreement, have
21 discussed it with my counsel, and its terms are understood by me
22 and are agreeable and acceptable to me. I understand that I am
23 waiving rights given to me by the California Administrative
24 Procedure Act, and I willingly, intelligently and voluntarily
25 waive those rights, including the right of requiring the
26 Commissioner to prove the allegations in the Accusation at a
27 hearing at which I would have the right to cross-examine

1 witnesses against me and to present evidence in defense and
2 mitigation of the charges.

HARTLEB-PRASAD CORP.
Respondent

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4
5 11/08/04
6 DATED

By 
HEMANT KUMAR PRASAD, President

7
8 11/08/04
9 DATED

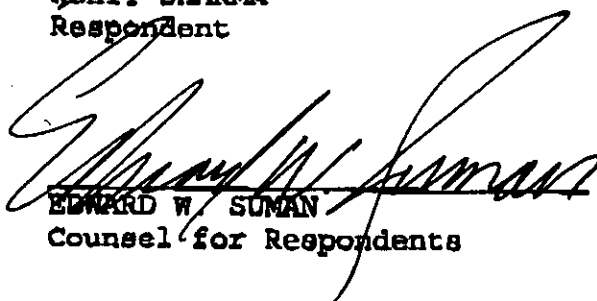

HEMANT KUMAR PRASAD
Respondent

10
11 11/8/04
12 DATED


ROHIT SHARMA
Respondent

13 APPROVED AS TO FORM;

14 11-15-04
15 DATED

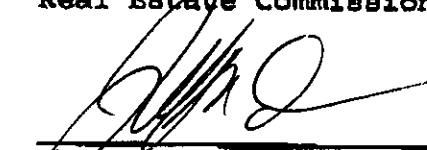

EDWARD W. SUMAN
Counsel for Respondents

16
17 * * *

18 The foregoing Stipulation and Agreement is hereby
19 adopted as my Decision and shall become effective at 12 o'clock
20 noon on February 9, 2005.

21 IT IS SO ORDERED December 9, 2004.

22
23 JEFF DAVI
24 Real Estate Commissioner

25 
26
27

FILED
AUG 16 2004

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

In the Matter of the Accusation of

HARTLEB-PRASAD CORP.,
HEMANT KUMAR PRASAD, and
ROHIT SHARMA,

}

Case No. H-4034 SAC

OAH No. N-2004070624

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at

THE OFFICE OF ADMINISTRATIVE HEARINGS

560 J STREET, SUITES 340/360

SACRAMENTO, CALIFORNIA 95814

on **NOVEMBER 9, 2004, and NOVEMBER 10, 2004**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: AUGUST 13, 2004

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, Counsel
SBN 66322
2 Department of Real Estate
P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789
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JUN 18 2004

DEPARTMENT OF REAL ESTATE
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12 In the Matter of the Accusation of)
13 HARTLEB-PRASAD CORP.,) NO. H-4034 SAC
14 HEMANT KUMAR PRASAD, and) ACCUSATION
15 ROHIT SHARMA,)
Respondents.)

16 The Complainant, PETE SAVERIEN, a Deputy Real Estate
17 Commissioner of the State of California, for causes of Accusation
18 against HARTLEB-PRASAD CORP., HEMANT KUMAR PRASAD, and ROHIT
19 SHARMA is informed and alleges as follows:

20 PRELIMINARY ALLEGATIONS

21 I

22 Respondent HARTLEB-PRASAD CORP., HEMANT KUMAR PRASAD,
23 and ROHIT SHARMA (hereafter Respondents) are presently licensed
24 and/or have license rights under the Real Estate Law, Part 1 of
25 Division 4 of the California Business and Professions Code
26 (hereafter the Code).
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II

The Complainant, PETE SAVERIEN, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondent in his official capacity and not otherwise.

III

At all times herein mentioned, Respondent HARTLEB-PRASAD CORP (hereafter HPC) was and is licensed by the Department of Real Estate (hereafter the Department) as a real estate broker corporation, individually and doing business as AMERIMAC-SIERRA PACIFIC MORTGAGE, PACIFIC STAR REAL ESTATE & LOANS, PACIFIC STAR REALTY, and/or SIERRA PACIFIC MORTGAGE CORP.

IV

At all times herein mentioned, Respondent HEMANT KUMAR PRASAD (hereafter PRASAD) was and is licensed by the Department as an individual real estate broker, and as the designated broker officer of HPC.

V

At all times herein mentioned, Respondent ROHIT SHARMA (hereafter SHARMA) was and is licensed by the Department as an individual real estate salesperson in the employ of HPC.

VI

At all times herein mentioned, Respondent HPC engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker within the State of California, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and/or borrowers were solicited for loans secured directly or collaterally by liens on

1 real property, and wherein such loans were arranged, negotiated,
2 processed, and consummated on behalf of others, for or in
3 expectation of compensation.

4
5 FIRST CAUSE OF ACTION

6 VII

7 On or about October 2, 2002, Respondents PRASAD and
8 SHARMA, on behalf of HPC, solicited and/or negotiated with Suneel
9 and Asha Sharma (hereafter Borrowers) to arrange a refinance
10 loan at a favorable interest rate of approximately 6.0% or lower,
11 in the sum of about \$165,000.00, to be secured by Borrowers'
12 residential real property located at 5042 Hemlock Street,
13 Sacramento, California.

14 VIII

15 Respondents HPC, PRASAD, and SHARMA owed to Borrowers
16 fiduciary duties of honesty, fair dealing, and due care in
17 negotiating a loan on their behalf, and a duty of good faith
18 disclosure of the estimated maximum fees, costs, and expenses
19 associated with the Borrowers' refinance loan as itemized in
20 Section 10241 of the Code and otherwise required by law.

21 IX

22 Respondents HPC, PRASAD, and/or SHARMA expressly or
23 impliedly represented to Borrowers that their total compensation
24 for negotiating Borrowers' loan was estimated to be the sum of
25 about \$2,475.00 to be paid to Respondents by the Lender only, and
26 not to be paid out of Borrowers' loan proceeds (a "no points"
27 loan). Respondents also represented to Borrowers that the total

1 closing costs to be paid by Borrowers to close the loan was
2 estimated to be in the sum of about \$3,273.00.

3 X

4 Respondents HPC and PRASAD failed to prepare and/or
5 deliver to Borrowers, or cause to be delivered, a written borrower
6 disclosure statement as required by Section 10240 of the Code
7 within three business days after receipt of the completed written
8 loan application for said loan, or prior to the Borrowers becoming
9 obligated on the note, whichever is earlier; and/or failed to
10 retain executed copies of such a statement with the records of
11 the company.

12 XI

13 On or about November 12, 2002, Respondents negotiated
14 and received a "Rate Float Confirmation" for Borrowers from
15 Lender RBMG, Inc. (hereafter the Lender), for an interest rate
16 of 6.125%. Borrowers informed Respondents they wanted a lower
17 interest rate.

18 XII

19 On or about December 16, 2002, Respondents negotiated
20 and received a "Rate Lock Confirmation" for Borrowers from
21 Lender, for a different loan at an interest rate of 5.875%.
22 Respondents also negotiated a change in the Borrowers' loan
23 amount increasing it from \$165,000.00 to \$169,000.00.

24 XIII

25 On or after December 16, 2002, Respondents HPC, PRASAD,
26 and/or SHARMA prepared or caused to be prepared a broker demand
27 for compensation and submitted the demand to the Lender consisting

1 of: (1) Broker loan origination fee of 1% to be paid by Borrowers
2 to Respondents in the sum of \$1,690.00; (2) Broker discount fee
3 of 1.5% to be paid by Borrowers to Respondents in the sum of
4 \$2,535.00; (3) Broker processing fee to be paid by Borrowers to
5 Respondents in the sum of \$395.00; and (4) Yield spread premium
6 of 0.434% to be paid by Lender to Respondents in the sum of
7 \$733.46, for a total compensation demand, exclusive of third-
8 party costs, of \$5,353.46, of which the sum of approximately
9 \$4,620.00 was to be paid by Borrowers from their loan proceeds.

10 XIV

11 Respondents HPC and PRASAD failed to prepare and/or
12 deliver to Borrowers, or cause to be delivered, a written borrower
13 disclosure statement as required by Section 10240 of the Code
14 within three business days after receipt of the completed written
15 loan application for the new and different loan, or prior to the
16 Borrowers becoming obligated on the note, whichever is earlier;
17 and/or failed to retain executed copies of such a statement with
18 the records of the company.

19 XV

20 Escrow was scheduled to close on the Borrowers' refinance
21 loan on or about January 21, 2003. On or about January 15, 2003,
22 Borrowers signed off on material loan documents at Alliance Title
23 Company. Borrowers were charged and paid the total sum of about
24 \$8,269.00 in total fees, costs, and expenses of closing escrow
25 on the loan, including the sum of about \$4,620.00 in total
26 compensation to Respondents.

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XVI

Prior to Borrowers' becoming obligated on the note on or about January 15, 2003, Respondents HPC, PRASAD, and/or SHARMA failed to provide Borrowers with a full and complete disclosure of the estimated maximum fees, costs, and expenses associated with the Borrowers' refinance loan as required by law, and acted with negligent, reckless, or intentional disregard of Borrowers' rights.

XVII

The acts and/or omissions of Respondents HPC, PRASAD, and SHARMA as alleged above violate Section 10240 of the Code and constitute grounds for disciplinary action under the provisions of Section 10177(d) of the Code. Said acts and/or omissions constitute grounds for disciplinary action under the provisions of Section 10176(a), 10177(g), and/or 10176(i) of the Code.

SECOND CAUSE OF ACTION

XVIII

In addition, or in the alternative to the first cause of action above, within the last three years, Respondent PRASAD failed to exercise reasonable supervision over the activities of HPC and SHARMA for which a real estate license is required. In particular, Respondent PRASAD permitted, ratified and/or caused the conduct described in the first cause of action above to occur and failed to take reasonable steps including but not limited to the institution of policies and procedures to ensure accurate and complete disclosures to clients about material loan information, to ensure preparation and delivery of written

1 borrower loan disclosure statements to clients as required by
2 law, to ensure their explanation and execution by the clients,
3 to ensure retention of executed copies of written borrower loan
4 disclosure statements in the company's records; and a system to
5 monitor compliance with such policies and to ensure the compliance
6 of the company with the Real Estate Law.

7 XIX

8 The acts and/or omissions of Respondent PRASAD alleged
9 above constitute cause for disciplinary action pursuant to
10 Section 10177(h) of the Code.

11 WHEREFORE, Complainant prays that a hearing be conducted
12 on the allegations of this Accusation and that upon proof thereof
13 a decision be rendered imposing disciplinary action against all
14 licenses and license rights of Respondents under the Real Estate
15 Law (Part 1 of Division 4 of the Business and Professions Code),
16 and for such other and further relief as may be proper under
17 other provisions of law.

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21 
22 PETE SAVERIEN
23 Deputy Real Estate Commissioner
24

25 Dated at Sacramento, California,
26 this 26th day of May, 2004
27