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Department of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007
Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE

By Anne Shaver

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)
CAPITAL FINANCE CORPORATION, and)
RICHARD STEPHEN MORRIS,)
Respondent.)

No. H-4271 SAC

STIPULATION AND
AGREEMENT

It is hereby stipulated by and between CAPITAL FINANCE CORPORATION, and RICHARD STEPHEN MORRIS (hereafter Respondents) and their attorney, Frank M. Buda, and the Complainant, acting by and through Truly Sughrue, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing the Accusation filed on April 19, 2005 in this matter:

1. All issues which were to be contested and all evidence which was to be presented by Complainant and Respondents 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

1 submitted solely on the basis of the provisions of this
2 Stipulation and Agreement.

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

6 3. On May 3, 2005, Respondents filed a Notice of
7 Defense pursuant to Section 11505 of the Government Code for the
8 purpose of requesting a hearing on the allegations in the
9 Accusation. Respondents hereby freely and voluntarily withdraw
10 said Notice of Defense. Respondents acknowledge that they
11 understand that by withdrawing said Notice of Defense they will
12 thereby waive their rights to require the Commissioner to prove
13 the allegations in the Accusation at a contested hearing held in
14 accordance with the provisions of the APA, and that they will
15 waive other rights afforded to them in connection with the
16 hearing such as the right to present evidence in defense of the
17 allegations in the Accusation and the right to cross-examine
18 witnesses.

19 4. This stipulation is based on the factual
20 allegations contained in the Accusation. In the interest of
21 expediency and economy, Respondents choose not to contest these
22 factual allegations, but to remain silent and understands that,
23 as a result thereof, these factual statements will serve as a
24 prima facie basis for the "Determination of Issues" and "Order"
25 set forth below. The Real Estate Commissioner shall not be
26 required to provide further evidence to prove such allegations.

27 5. This Stipulation and Respondents decision not to

1 contest the Accusation are made for the purpose of reaching an
2 agreed disposition of this proceeding and are expressly limited
3 to this proceeding and any other proceeding or case in which the
4 Department of Real Estate (herein "the Department"), the state or
5 federal government, an agency of this state, or an agency of
6 another state is involved.

7 6. Respondents understand that by agreeing to this
8 Stipulation and Agreement, Respondents agree to pay, pursuant to
9 Section 10148 of the California Business and Professions Code,
10 the cost of the audit which resulted in the determination that
11 Respondent committed the trust fund violation(s) found in
12 Paragraph I, below, of the Determination of Issues. The amount
13 of said costs is \$1,826.76.

14 7. Respondent further understands that by agreeing
15 to this Stipulation and Agreement in Settlement, the findings
16 set forth below in the Determination Of Issues become final, and
17 that the Commissioner may charge said Respondents for the
18 costs of any audit conducted pursuant to Section 10148 of
19 the California Business and Professions Code to determine if
20 the violations have been corrected. The maximum costs of
21 said audit shall not exceed \$1,826.76.

22 8. It is understood by the parties that the Real
23 Estate Commissioner may adopt the Stipulation and Agreement as
24 his decision in this matter thereby imposing the penalty and
25 sanctions on the real estate licenses and license rights of
26 Respondent as set forth in the below "Order". In the event that
27

1 the Commissioner in his discretion does not adopt the Stipulation
2 and Agreement, it shall be void and of no effect, and Respondents
3 shall retain the right to a hearing and proceeding on the
4 Accusation under all the provisions of the APA and shall not be
5 bound by any admission or waiver made herein.

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

13 * * *

14 DETERMINATION OF ISSUES

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

19 I

20 The acts and/or omissions of Respondents CAPITAL
21 FINANCE CORPORATION, and RICHARD STEPHEN MORRIS as described in
22 Paragraph VII of the Accusation violated the provisions of
23 Section 10145 of the California Business and Professions Code
24 (hereinafter "the Code") and are grounds for the suspension or
25 revocation of the licenses and license rights of Respondent under
26 the provisions of Section 10177(d) of the Code.

27 * * *

ORDER

I

No discipline is imposed on Respondents CAPITAL FINANCE

CORPORATION, and RICHARD STEPHEN MORRIS

3-Oct-05
DATED


TRULY SOHRUE
Counsel for Complainant

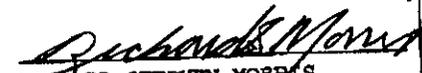
A * *

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

September 28, 2005
DATED


CAPITAL FINANCE CORPORATION
Respondent

September 28, 2005
DATED


RICHARD STEPHEN MORRIS
Respondent

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I have reviewed the Stipulation and Agreement as to form and content and have advised my client accordingly.

9-28-05
DATED

Frank M. Budda
FRANK M. BUDDA
Attorney for Respondents

* * *

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

IT IS SO ORDERED 10-20, 2005.

JEFF DAVI
Real estate Commissioner
[Signature]

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

FILED
APR 19 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 CAPITAL FINANCE CORPORATION, and) NO. H-4271 SAC
14 RICHARD STEPHEN MORRIS,)
15 Respondents.) ACCUSATION

16
17 The Complainant, CHARLES W. KOENIG, a Deputy Real
18 Estate Commissioner of the State of California, for causes of
19 Accusation against CAPITAL FINANCE CORPORATION and RICHARD
20 STEPHEN MORRIS, is informed and alleges as follows:

21 PRELIMINARY ALLEGATIONS

22
23 I

24 Respondents CAPITAL FINANCE CORPORATION and RICHARD
25 STEPHEN MORRIS are presently licensed and/or have license rights
26 under the Real Estate Law, Part 1 of Division 4 of the California
27 Business and Professions Code (hereafter the Code).

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II

The Complainant, CHARLES W. KOENIG, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity and not otherwise.

III

At all times herein mentioned, Respondent CAPITAL FINANCE CORPORATION (hereafter CAPITAL) was licensed by the State of California Department of Real Estate (hereafter the Department) as a real estate broker corporation.

IV

At all times herein mentioned, Respondent RICHARD STEPHEN MORRIS (hereafter MORRIS) was licensed by the Department as an individual real estate broker, and as the designated broker officer of CAPITAL. At all times herein mentioned, MORRIS was the Secretary/Treasurer and owner of approximately fifty percent of the shares of CAPITAL.

V

Within the last three years, CAPITAL 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 borrowers and lenders were solicited for loans secured directly or collaterally by liens on real property, and wherein CAPITAL primarily brokered construction and equity loans with private lenders/investors.

///

1 FIRST CAUSE OF ACTION

2 VI

3 Beginning in or about April of 2004, the Department
4 conducted an audit of the books and records of Respondent
5 CAPITAL for the time period of January 1, 2003 to April 30, 2004
6 (hereafter the audit period), as set forth in more detail in
7 Department Audit Report No. SC030041, dated May 11, 2004, and
8 all accompanying working papers and exhibits. During the audit
9 period, Respondent CAPITAL was also a high-volume threshold
10 broker, and a multi-lender broker that brokered undivided
11 interests in secured notes to multiple third-party lenders.

12 VII

13 In acting as a mortgage loan broker as alleged in
14 Paragraphs V and VI above, Respondent CAPITAL failed to deposit
15 and maintain trust funds in a trust account in the name of
16 CAPITAL as trustee, or in a neutral escrow depository, or to
17 deliver them into the hands of the owners of the funds as
18 required by Sections 10145, 10229(i), and/or 10238(j) of the
19 Code. During the audit period, CAPITAL directed clients to make
20 some or all trust funds payable directly to El Dorado Savings
21 Bank, a financial institution that was not a neutral escrow
22 depository.

23 VIII

24 For multi-lender loans during the audit period,
25 Respondent CAPITAL negotiated loans and/or sales of notes that,
26 together with the unpaid principal amount of any encumbrances
27 upon the real property senior thereto, exceeded the statutory

1 maximum loan-to-value ratios on real property as required by
2 Sections 10229(g) and/or 10238(h) of the Code, including but not
3 limited to the following:

4 (a) Loan #04-1028 for borrower Don Parker in the
5 amount of \$140,000.00, that closed escrow on or about
6 February 27, 2004: Respondent's loan-to-value ratio of 76.25%
7 exceeded the maximum of 65% for single-family residentially
8 zoned lot or parcel; and,

9 (b) Loan #03-1150 for borrower Jeff Aguierre in the
10 amount of \$600,000.00, that closed escrow on or about October 27,
11 2003: Respondent's loan-to-value ratio of 74.07% exceeded the
12 maximum of 65% for single-family residentially zoned lot or
13 parcel.

14 IX

15 As to multi-lender loans during the audit period,
16 Respondent CAPITAL failed to obtain, and/or to retain in its
17 records, signed statements or completed statements from each
18 lender/investor as to each lender/investor's qualifications of
19 income or net worth for the loan, indicating that the investment
20 in each transaction did not exceed either 10% of his or her net
21 worth, or 10% of his or her adjusted gross income, as required by
22 Section 10229(e) and/or 10238(f) of the Code, including but not
23 limited to: (a) Loan #04-1028 for investor James Kauffman;
24 (b) Loan #03-1129 for investor Bob Boynton; (c) Loan #03-1129
25 for investor Robert Davies; and, (d) Loan #03-1150 for investor
26 Chuck Hughes.

27 ///

1 X

2 For some or all multi-lender loans during the audit
3 period, Respondent CAPITAL failed to provide lenders/investors
4 with promissory notes or assignments of promissory notes that
5 were not by their terms subject to subordination to any
6 subsequently created deed of trust upon the real property
7 securing the obligations evidenced by the notes or assignments
8 as required by Sections 10229(c) and/or 10238(d) of the Code,
9 including but not limited to: (a) Loan #04-1028 for borrower
10 Don Parker; (b) Loan #03-1129 for borrower Stan Kubat; and,
11 (c) Loan #03-1150 for borrower Jeff Aguierre.

12 XI

13 For some or all multi-lender loans during the audit
14 period, including but not limited Loan #04-1028 for Don Parker,
15 Respondent CAPITAL utilized a future market value based on
16 completed construction of improvements on the real property
17 securing the note. CAPITAL failed to comply with statutory
18 safeguards when utilizing the value of the future completed
19 project, as required by Section 10238(h)(4) of the Code,
20 including:

21 (a) No independent neutral third-party escrow holder
22 was used for deposits and disbursements;

23 (b) The loan was not fully funded prior to recording
24 the deed of trust securing the loan; and/or,

25 (c) No appraisal was ordered and completed by a
26 qualified, licensed appraiser.

27 ///

1 XII

2 The acts and/or omissions of Respondent CAPITAL as
3 alleged above constitute grounds for disciplinary action under
4 the following provisions:

- 5 (a) As to Paragraph VII, under Sections 10145,
6 10229(i), and/or 10238(j) of the Code, and
7 Section 2832 of the Regulations in conjunction
8 with Section 10177(d) of the Code;
- 9 (b) As to Paragraph VIII, under Sections 10229(g)
10 and/or 10238(h) of the Code in conjunction with
11 Section 10177(d) of the Code;
- 12 (c) As to Paragraph IX, under Section 10229(e) and/or
13 10238(f) of the Code in conjunction with Section
14 10177(d) of the Code.
- 15 (d) As to Paragraph X, under Section 10229(c) and/or
16 10238(d) of the Code in conjunction with Section
17 10177(d) of the Code.
- 18 (e) As to Paragraph XI, under Section 10238(h) (4)
19 of the Code in conjunction with Section 10177(d)
20 of the Code.

21 SECOND CAUSE OF ACTION

22 XIII

23 At all times mentioned herein, Respondent MORRIS failed
24 to exercise reasonable supervision and control of the activities
25 of CAPITAL for which a real estate license is required. In
26 particular, MORRIS caused, permitted, and/or ratified the conduct
27 described above, and/or failed to take reasonable steps to

1 implement effective supervision that would have prevented it,
2 including but not limited to: (a) the establishment of policies,
3 rules, procedures, and systems to review, oversee, inspect and
4 manage the business including but not limited to the handling of
5 trust funds and multi-lender loan requirements; and, (b) the
6 establishment of systems for monitoring compliance with such
7 policies, rules, procedures, and systems, to ensure compliance
8 by the company with the Real Estate Law.

9 XIV

10 The acts and/or omissions of MORRIS as alleged above
11 constitute grounds for disciplinary action under the provisions
12 of Section 10177(h) of the Code and Section 2725 of the
13 Regulations.

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

21
22
23 
24 CHARLES W. KOENIG
25 Deputy Real Estate Commissioner

26 Dated at Sacramento, California,
27 this 5th day of April, 2005.