

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0791
5 -or- (916) 227-0788 (Direct)

FILED

JUL 10 2008

DEPARTMENT OF REAL ESTATE
By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 BLACKBURNE AND BROWN MORTGAGE) DRE NO. H-4794 SAC
13 CORPORATION, INC.,)
14 a Corporation, and) OAH NO. N-2007070459
15 GEORGE BLACKBURNE, III,)
16 Respondents.) STIPULATION AND AGREEMENT

17 It is hereby stipulated by and between Respondents
18 BLACKBURNE AND BROWN MORTGAGE CORPORATION, INC. (herein
19 "BLACKBURNE & BROWN"), and GEORGE BLACKBURNE, III (herein
20 "BLACKBURNE") individually and jointly as designated officer-
21 broker of BLACKBURNE & BROWN (herein jointly "Respondents"), by
22 and through Louis A. Gonzalez, Jr., attorney of record herein for
23 Respondents, and the Complainant, acting by and through Mary F.
24 Clarke, Counsel for the Department of Real Estate (herein "the
25 Department"), as follows for the purpose of settling and
26 disposing of the Accusation filed on June 19, 2007, in this
27 matter (herein "the Accusation"):

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

7 2. Respondents have received, read and understand the
8 Statement to Respondent, the Discovery Provisions of the APA and
9 the Accusation filed by the Department in this proceeding.

10 3. On June 29, 2007, Respondents filed a Notice of
11 Defense pursuant to Section 11505 of the Government Code for the
12 purpose of requesting a hearing on the allegations in the
13 Accusation. Respondents hereby freely and voluntarily withdraw
14 said Notice of Defense. Respondents acknowledge that Respondents
15 understand that by withdrawing said Notice of Defense Respondents
16 will thereby waive Respondents' right to require the Real Estate
17 Commissioner (herein "the Commissioner") to prove the allegations
18 in the Accusation at a contested hearing held in accordance with
19 the provisions of the APA and that Respondents will waive other
20 rights afforded to Respondents in connection with the hearing
21 such as the right to present evidence in defense of the
22 allegations in the Accusation and the right to cross-examine
23 witnesses.

24 4. Respondents, pursuant to the limitations set forth
25 below, hereby admit that the factual allegations in the
26 Accusation are true and correct and the Commissioner shall not
27 be required to provide further evidence of such allegations.

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

11 6. This Stipulation and Agreement shall not constitute
12 an estoppel, merger or bar to any further administrative or civil
13 proceedings by the Department with respect to any matters which
14 were not specifically alleged to be causes for accusation in this
15 proceeding.

16 7. Respondents understand that by agreeing to this
17 Stipulation and Agreement, Respondents agree to pay, pursuant to
18 Section 10148 of the California Business and Professions Code,
19 the cost of the audit which resulted in the determination that
20 Respondents committed the trust fund violation(s) found in
21 Paragraph I, below, of the Determination of Issues. The amount
22 of said costs is \$4,820.75.

23 8. Respondents further understand that by agreeing to
24 this Stipulation and Agreement, the findings set forth below in
25 the Determination Of Issues become final, and that the
26 Commissioner may charge said Respondents for the costs of any
27 audit conducted pursuant to Section 10148 of the California

1 Business and Professions Code to determine if the trust fund
2 violation(s) found in Paragraph I, below, of the Determination
3 of Issues have been corrected. The maximum costs of said audit
4 shall not exceed \$4,820.75.

5 DETERMINATION OF ISSUES

6 By reason of the foregoing stipulations, admissions and
7 waivers, and solely for the purpose of settlement of the pending
8 Accusation without hearing, it is stipulated and agreed that the
9 following Determination of Issues shall be made:

10 I

11 The acts and omissions of Respondents BLACKBURNE &
12 BROWN and BLACKBURNE, as described in the Accusation are grounds
13 for the suspension or revocation of the licenses and license
14 rights of Respondents BLACKBURNE & BROWN and BLACKBURNE, under
15 the following provisions of the California Business and
16 Professions Code (herein "the Code") and/or Chapter 6, Title 10,
17 California Code of Regulations (herein "the Regulations"):

18 (a) as to subparagraph IX(b) and Respondent
19 BLACKBURNE & BROWN under Section 10145 of the Code and Section
20 2832.1 of the Regulations in conjunction with Section 10177(d)
21 of the Code.

22 (b) as to subparagraph IX(c) and Respondent BLACKBURNE
23 & BROWN under Section 10145 of the Code and Section 2834 of the
24 Regulations in conjunction with Section 10177(d) of the Code.

25 (c) as to Paragraph X and Respondent BLACKBURNE under
26 Section 10159.2 of the Code in conjunction with Sections
27 10177(g), 10177(h) of the Code.

ORDER

1
2 A. All licenses and licensing rights of Respondents BLACKBURNE
3 & BROWN and BLACKBURNE under the Real Estate Law are
4 indefinitely suspended until such time as Respondents submit
5 proof satisfactory to the Commissioner that Respondents have
6 taken and completed at an accredited institution the
7 continuing education course on trust fund accounting and
8 handling specified in paragraph (3) of subdivision (a) of
9 Section 10170.5 of the Code. Said course must have been
10 completed not earlier than 120 days prior to the effective
11 date of the Decision herein. Upon satisfaction of the
12 condition described in this Paragraph "A", the indefinite
13 suspension provided in this Paragraph "A" shall be stayed.

14 B. All licenses and licensing rights of Respondents BLACKBURNE
15 & BROWN and BLACKBURNE under the Real Estate Law are
16 suspended for a period of thirty (30) days from the
17 effective date of the Decision herein; provided, however:

18 1. If Respondents petition said suspension:

19 (a) Respondents each pay a monetary penalty pursuant to
20 Section 10175.2 of the Code at the rate of \$100.00
21 for 15 days of the suspension for a total monetary
22 penalty of \$3,000.00.

23 (b) Said payment shall be in the form of a cashier's
24 check or certified check made payable to the
25 Recovery Account of the Real Estate Fund. Said
26 check must be received by the Department prior to
27 the effective date of the Decision in this matter.

1 (c) If Respondents fail to pay the monetary penalty in
2 accordance with the terms and conditions of the
3 Decision, the Commissioner may, without a hearing,
4 vacate and set aside the stay order, and order the
5 immediate execution of all or any part of the
6 stayed suspension.

7 (d) No final subsequent determination be made, after
8 hearing or upon stipulation, that cause for
9 disciplinary action against Respondents occurred
10 within two (2) years of the effective date of the
11 Decision herein. Should such a determination be
12 made, the Commissioner may, in his or her
13 discretion, vacate and set aside the stay order,
14 and order the execution of all or any part of the
15 stayed suspension, in which event the Respondents
16 shall not be entitled to any repayment nor credit,
17 prorated or otherwise, for money paid to the
18 Department under the terms of this Decision.

19 (e) If Respondents pay the monetary penalty and if no
20 further cause for disciplinary action against the
21 real estate licenses of Respondents occurs within
22 two (2) years from the effective date of the
23 Decision herein, then the stay hereby granted
24 shall become permanent.

25 2. Fifteen (15) days of said suspension shall be stayed
26 upon condition that:

27 ///

1 (a) No final subsequent determination be made, after
2 hearing or upon stipulation, that cause for
3 disciplinary action against Respondents occurred
4 within two (2) years of the effective date of the
5 Decision herein.

6 (b) Should such a determination be made, the
7 Commissioner may, in his or her discretion, vacate
8 and set aside the stay order, and order the
9 execution of all or any part of the stayed
10 suspension, in which event the Respondents shall
11 not be entitled to any repayment nor credit,
12 prorated or otherwise, for money paid to the
13 Department under the terms of this Decision.

14 (c) If no order vacating the stay is issued, and if no
15 further cause for disciplinary action against the
16 real estate licenses of Respondents occurs within
17 two (2) years from the effective date of the
18 Decision, then the stay hereby granted shall
19 become permanent.

20 C. Respondents shall, within 60 days of receiving an invoice
21 therefor from the Commissioner, pay the Commissioner's costs
22 in the amount of \$4,820.75 of the audit conducted pursuant
23 to Section 10148 of the Code that resulted in the
24 determination that Respondents committed the violations
25 described in Paragraph I of the Determination of Issues,
26 above. If Respondents fail to pay such cost within the
27 60 days, the Commissioner may in his or her discretion

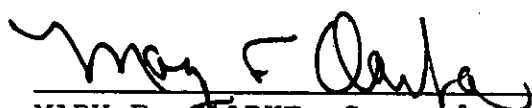
1 indefinitely suspend all licenses and licensing rights of
2 Respondents under the Real Estate Law until payment is made
3 in full or until Respondents enter into an agreement
4 satisfactory to the Commissioner to provide for payment.
5 Upon payment in full, any indefinite suspension provided in
6 this paragraph shall be stayed.

7 D. Respondents shall pay the Commissioner's costs, not to
8 exceed \$4,820.75, of any audit conducted pursuant to Section
9 10148 of the Code to determine if Respondents have corrected
10 the violations described in Paragraph I of the Determination
11 of Issues, above. In calculating the amount of the
12 Commissioner's reasonable cost, the Commissioner may use the
13 estimated average hourly salary for all persons performing
14 audits of real estate brokers, and shall include an
15 allocation for travel time to and from the auditor's place
16 of work. Respondents shall pay such cost within 60 days of
17 receiving an invoice therefor from the Commissioner
18 detailing the activities performed during the audit and the
19 amount of time spent performing those activities. If
20 Respondents fail to pay such cost within the 60 days, the
21 Commissioner may in his or her discretion indefinitely
22 suspend all licenses and licensing rights of Respondents
23 under the Real Estate Law until payment is made in full or
24 until Respondents enter into an agreement satisfactory to
25 the Commissioner to provide for payment. Upon payment in
26 full, the indefinite suspension provided in this paragraph
27 shall be stayed.

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6-9-08

DATED



MARY F. CLARKE, Counsel
Department of Real Estate

* * *

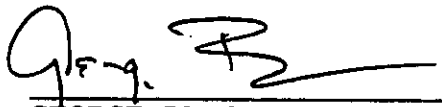
I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California APA, and I willingly, intelligently and voluntarily waive those rights, including 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.

BLACKBURNE AND BROWN MORTGAGE CORPORATION, INC.,
Respondent

5/29/08
DATED


By: 
GEORGE BLACKBURNE, III

5/29/08
DATED


GEORGE BLACKBURNE, III,
Respondent

APPROVED AS TO FORM:

6/6/08
DATED


LOUIS A. GONZALEZ, JR.
Counsel for the Respondents

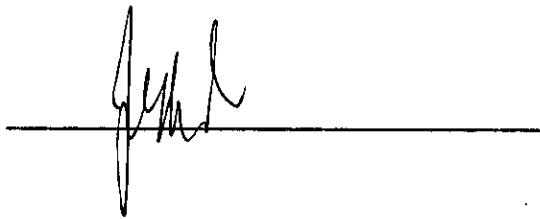
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at 12 o'clock
noon on July 30, 2008.

IT IS SO ORDERED 8-24, 2008.

JEFF DAVI
Real Estate Commissioner



1 MARY F. CLARKE, Real Estate Counsel (SBN 186744)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
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FILED
JUN 19 2007
DEPARTMENT OF REAL ESTATE

By K. Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 In the Matter of the Accusation of)
12)
13 BLACKBURNE & BROWN)
14 MORTGAGE CO., INC.,)
15 a Corporation, and,)
16 GEORGE BLACKBURNE III,)
17)
18 Respondents.)

NO. H-4794 SAC

ACCUSATION

19 The Complainant, CHARLES W. KOENIG, a Deputy Real
20 Estate Commissioner of the State of California, for cause of
21 Accusation against BLACKBURNE & BROWN MORTGAGE CO., INC.
22 (herein "BLACKBURNE & BROWN") and GEORGE BLACKBURNE III (herein
23 "BLACKBURNE"), is informed and alleges as follows:

24 I

25 The Complainant, CHARLES W. KOENIG, a Deputy Real
26 Estate Commissioner of the State of California, makes this
27 Accusation in his official capacity.

II

At all times herein mentioned, Respondents BLACKBURNE
& BROWN and BLACKBURNE (herein "Respondents") were and now are

1 (Part 1 of Division 4 of the Business and Professions Code)
2 (herein "the Code").

3 III

4 At all times herein mentioned, BLACKBURNE & BROWN was
5 and now is licensed by the Department of Real Estate of the
6 State of California (herein "the Department") as a corporate real
7 estate broker by and through BLACKBURNE as designated officer-
8 broker of BLACKBURNE & BROWN to qualify said corporation and to
9 act for said corporation as a real estate broker.

10 IV

11 At all times herein mentioned, BLACKBURNE was and now is
12 licensed by the Department as a real estate broker, individually
13 and as designated officer-broker of BLACKBURNE & BROWN. As said
14 designated officer-broker, BLACKBURNE was at all times mentioned
15 herein responsible pursuant to Section 10159.2 of the Code for
16 the supervision of the activities of the officers, agents, real
17 estate licensees and employees of BLACKBURNE & BROWN for which a
18 license is required.

19 V

20 Whenever reference is made in an allegation in this
21 Accusation to an act or omission of BLACKBURNE & BROWN, such
22 allegation shall be deemed to mean that the officers, directors,
23 employees, agents and/or real estate licensees employed by or
24 associated with BLACKBURNE & BROWN committed such act or omission
25 while engaged in the furtherance of the business or operations of
26 such corporate Respondent and while acting within the course and
27 scope of their authority and employment.

1 VI

2 At all times herein mentioned Respondents engaged in
3 the business of, acted in the capacity of, advertised, or assumed
4 to act as real estate brokers within the State of California
5 within the meaning of Sections 10131(b) and 10131(d) of the Code,
6 including:

7 (a) the operation and conduct of a property management
8 business with the public wherein, on behalf of others, for
9 compensation or in expectation of compensation, Respondents
10 leased or rented and offered to lease or rent, and placed for
11 rent, and solicited listings of places for rent, and solicited
12 for prospective tenants of real property or improvements thereon,
13 and collected rents from real property or improvements thereon;
14 and

15 (b) the operation and conduct of a mortgage loan
16 brokerage with the public wherein, on behalf of others, for
17 compensation or in expectation of compensation, Respondents
18 solicited lenders and borrowers for loans secured directly or
19 collaterally by liens on real property, and wherein Respondents
20 arranged, negotiated, processed, and consummated such loans.

21 VII

22 In so acting as real estate brokers, Respondents
23 accepted or received funds in trust (herein "trust funds") from
24 or on behalf of lenders, investors, borrowers and others in
25 connection with the mortgage loan brokerage activities described
26 in Paragraph VI, above, and thereafter from time to time made
27 disbursements of said trust funds.

1 VIII

2 The aforesaid trust funds accepted or received by
3 Respondents were deposited or caused to be deposited by
4 Respondents into one or more bank accounts (herein "trust fund
5 accounts") maintained by Respondents for the handling of trust
6 funds, including but not necessarily limited to the following
7 accounts maintained by Respondents at the West Sacramento,
8 California branch of First Northern Bank:

9 (a) Blackburne & Brown Mortgage Company Inc. Loan
10 Servicing Trust Account, account number 5038339 ("Trust #1"),

11 (b) Blackburne & Brown Mortgage Company Inc. Special
12 Trust, account number 5038327 ("Trust #2"), and

13 (c) Blackburne & Brown Mortgage Company Inc. Property
14 Management Trust Account, account number 5038315 ("Trust #3").

15 IX

16 Between on or about January 1, 2006 through on or about
17 October 31, 2006, in connection with the mortgage loan brokerage
18 and trust fund handling activities described above, Respondents:

19 (a) in connection with the collection and disbursement
20 of said trust funds, suffered or permitted the balance of funds
21 in:

- 22 (1) Trust Account #1 to be reduced to an amount
23 which as of October 31, 2006, was
24 approximately \$9,456.63 less than the
25 aggregate liability of BLACKBURNE & BROWN to
26 all owners of such funds, without the prior
27 written consent of the owners of such funds;

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(2) Trust Account #2 to be reduced to an amount which as of October 31, 2006, was approximately \$42,738.88 less than the aggregate liability of BLACKBURNE & BROWN to all owners of such funds, without the prior written consent of the owners of such funds;

(3) Trust Account #3 to be reduced to an amount which as of October 31, 2006, was approximately \$19,792.50 less than the aggregate liability of BLACKBURNE & BROWN to all owners of such funds, without the prior written consent of the owners of such funds;

and,

(b) authorized Michael A. Thurman, an unlicensed person without fidelity bond coverage, to make withdrawals from Trust Account #1, Trust Account #2, and Trust Account #3, in violation of Section 2834 of the California Code of Regulations (herein "the Regulations").

X

At all times mentioned herein, BLACKBURNE failed to exercise reasonable supervision over the acts of BLACKBURNE & BROWN and its agents and employees in such a manner as to allow the acts and omissions on the part of BLACKBURNE & BROWN, described above, to occur.

XI

The facts alleged above are grounds for the suspension or revocation of the licenses and license rights of Respondents

1 under the following provisions of the Code and/or of the
2 Regulations:

3 (a) as to paragraph IX(a) and BLACKBURNE & BROWN under
4 Section 10145 of the Code and Section 2831 of the Regulations in
5 conjunction with Section 10177(d) of the Code;

6 (b) as to subparagraph IX(b) and BLACKBURNE & BROWN
7 under Section 10145 of the Code and Section 2832.1 of the
8 Regulations in conjunction with Section 10177(d) of the Code.

9 (c) as to subparagraph IX(c) and BLACKBURNE & BROWN
10 under Section 10145 of the Code and Section 2834 of the
11 Regulations in conjunction with Section 10177(d) of the Code.

12 (d) as to Paragraph X and BLACKBURNE under Section
13 10159.2 of the Code in conjunction with Sections 10177(g),
14 10177(h), and 10177(d) of the Code.

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

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

26 Dated at Sacramento, California
27 this 11th day of May, 2007.