

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789

FILED
NOV 30 2012

DEPARTMENT OF REAL ESTATE
By R. MAF

7 BEFORE THE DEPARTMENT OF REAL ESTATE
8 STATE OF CALIFORNIA

9 * * *

10
11 In the Matter of the Accusation of

12 FIRST CAPITAL MORTGAGE LOAN
13 CORPORATION,
14 CHRISTOPHER MICHAEL MILLER
and JACK ROLLAND EMERSON,

15 Respondents.

)
) NO. H-5467 SAC

)
) STIPULATION AND AGREEMENT

16
17 It is hereby stipulated by and between Respondents FIRST CAPITAL
18 MORTGAGE LOAN CORPORATION, ("FIRST CAPITAL"), CHRISTOPHER MICHAEL
19 MILLER, ("MILLER"), and JACK ROLLAND EMERSON, ("EMERSON"), (collectively
20 "Respondents"), acting by and through Kirk S. Rimmer, counsel for FIRST CAPITAL and
21 MILLER; Dennis M. Wilson, counsel for EMERSON; and the Complainant, acting by and
22 through John W. Barron, Counsel for the Department of Real Estate, as follows for the purpose
23 of settling and disposing of the Accusation filed on September 14, 2010, in this matter:

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

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H-5467 SAC

FIRST CAPITAL MORTGAGE LOAN CORPORATION,
CHRISTOPHER MICHAEL MILLER and JACK ROLLAND EMERSON

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

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

6 3. On September 23, 2010, EMERSON filed a Notice of Defense pursuant
7 to Section 11505 of the Government Code for the purpose of requesting a hearing on the
8 allegations in the Accusation. On September 27, 2010, FIRST CAPITAL and MILLER filed a
9 Notice of Defense pursuant to Section 11505 of the Government Code for the purposes of
10 requesting a hearing on the allegations in the Accusation. Respondents hereby freely and
11 voluntarily withdraw said Notices of Defense. Respondents acknowledge that Respondents
12 understand that by withdrawing said Notices of Defense, Respondents will thereby waive
13 Respondents' rights to require the Commissioner to prove the allegations in the Accusation at a
14 contested hearing held in accordance with the provisions of the APA and that Respondents will
15 waive other rights afforded to Respondents in connection with the hearing such as the right to
16 present evidence in defense of the allegations in the Accusation and the right to cross-examine
17 witnesses.

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

24 5. This Stipulation and Respondents' decisions not to contest the
25 Accusation are made for the purpose of reaching an agreed disposition of this proceeding and
26 are expressly limited to this proceeding and any other proceeding or case in which the

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DETERMINATION OF ISSUES

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By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the acts and omissions of FIRST CAPITAL and MILLER described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of FIRST CAPITAL and MILLER under the provisions of Sections 10232(e) (30-day threshold reporting requirement), 10232.2(b) (requirement to file annual threshold reports), 10232.4 (provisions of disclosure statement to lender/purchaser), 10232.25(d) (requirement to file statement of non-receipt of funds), 10234 (recordation requirement for trust deeds on real property), 10238(a) (reporting requirements for multi-lender transactions), 10238(f) (requirement of investor qualification statement on notes or interests), 10238(l) (written disclosure of material facts of transaction to lender/purchaser), 10240 (provision of mortgage loan disclosure statement to borrower), 10177(d) (willful disregard of real estate law) and 10177(g) (negligence) of the Code.

2

By reason of the foregoing stipulations, admissions and waivers and solely for the purpose of settlement of the pending Accusation without hearing, it is stipulated and agreed that the acts and omissions of EMERSON described in the Accusation are grounds for the suspension or revocation of the licenses and license rights of EMERSON under the provisions of Sections 10159.2 (responsibilities of corporate officer in charge), 10177(d), 10177(g) and 10177(h) (reasonable supervision responsibility of broker) of the Code, and Sections 2725 (broker supervision) and 2726 (required contents of broker-salesperson relationship agreements) of Title 10 of the California Code of Regulations (“the Regulations”).

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1 invoice therefore from the Commissioner. The Commissioner may indefinitely suspend all
2 licenses and licensing right of FIRST CAPITAL and EMERSON pending a hearing held in
3 accordance with Section 11500, et seq., of the Government Code, if payment is not timely
4 made as provided for herein, or as provided for in a subsequent agreement between FIRST
5 CAPITAL and EMERSON and the Commissioner. The suspension shall remain in effect until
6 payment is made in full or until FIRST CAPITAL and EMERSON enter into an agreement
7 satisfactory to the Commissioner to provide for payment, or until a decision providing
8 otherwise is adopted following a hearing held pursuant to this condition.

9 2. FIRST CAPITAL and EMERSON, jointly and severally, shall pay the
10 Commissioner's costs, not to exceed \$5,486.04, of any audit conducted pursuant to Section
11 10148 of the Code to determine if FIRST CAPITAL and EMERSON have corrected the
12 violations described in the Determination of Issues, above, and any other violations found in
13 the audit which led to this disciplinary action. In calculating the amount of the
14 Commissioner's reasonable cost, the Commissioner may use the estimated average hourly
15 salary for all persons performing audits of real estate brokers, and shall include an allocation
16 for travel time to and from the auditor's place of work. FIRST CAPITAL and EMERSON
17 shall pay such cost within sixty (60) days of receiving an invoice therefore from the
18 Commissioner detailing the activities performed during the audit and the amount of time spent
19 performing those activities. If FIRST CAPITAL and EMERSON fail to pay such cost within
20 the sixty (60) days, the Commissioner may indefinitely suspend all licenses and licensing
21 rights of FIRST CAPITAL and EMERSON under the Real Estate Law until payment is made
22 in full or until FIRST CAPITAL and EMERSON enter into an agreement satisfactory to the

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1 Commissioner to provide for payment. Upon full payment, the indefinite suspension provided
2 for in this paragraph shall be stayed.

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4 8/7/12

5 DATED

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9 JOHN W. BARRON, Counsel
10 Department of Real Estate

11 * * *

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

19 DATED

20 JACK ROLLAND EMERSON
21 Respondent and as the Designated
22 Officer/Broker for Respondent
23 FIRST CAPITAL LOAN MORTGAGE
24 CORPORATION

25 DATED

26 CHRISTOPHER MICHAEL MILLER
27 Respondent

* * *

1 Commissioner to provide for payment. Upon full payment, the indefinite suspension provided
2 for in this paragraph shall be stayed.

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DATED

JOHN W. BARRON, Counsel
Department of Real Estate

* * *

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8/3/12
DATED


JACK ROLLAND EMERSON
Respondent and as the Designated
Officer/Broker for Respondent
FIRST CAPITAL LOAN MORTGAGE
CORPORATION

DATED

CHRISTOPHER MICHAEL MILLER
Respondent

* * *

1 Commissioner to provide for payment. Upon full payment, the indefinite suspension provided
2 for in this paragraph shall be stayed.

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DATED

JOHN W. BARRON, Counsel
Department of Real Estate

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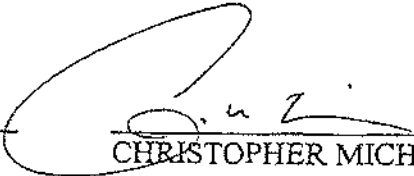
I have read the Stipulation and Agreement and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509, and 11513 of the Government 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.

DATED

JACK ROLLAND EMERSON
Respondent and as the Designated
Officer/Broker for Respondent
FIRST CAPITAL LOAN MORTGAGE
CORPORATION

August 3, 2012

DATED

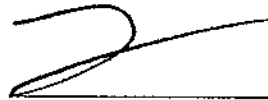

CHRISTOPHER MICHAEL MILLER
Respondent

* * *

1 I have reviewed this Stipulation and Agreement and Order as to form and
2 content and have advised my client(s) accordingly.

3
4 8/3/2012

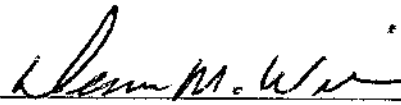
5 DATED



6 KIRK S. RIMMER
7 Attorney for Respondents, FIRST
8 CAPITAL MORTGAGE LOAN
9 CORPORATION and CHRISTOPHER
10 MICHAEL MILLER

11
12 8/3/2017

13 DATED



14 DENNIS M. WILSON
15 Attorney for Respondent,
16 JACK ROLLAND EMERSON

17 * * *

18 The foregoing Stipulation and Agreement is hereby adopted by me as my
19 Decision in this matter as to Respondents FIRST CAPITAL MORTGAGE LOAN
20 CORPORATION, CHRISTOPHER MICHAEL MILLER and JACK ROLLAND EMERSON,
21 and shall become effective at 12 o'clock noon on _____.

22 IT IS SO ORDERED _____.

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Real Estate Commissioner

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I have reviewed this Stipulation and Agreement and Order as to form and content and have advised my client(s) accordingly.

DATED

KIRK S. RIMMER
Attorney for Respondents, FIRST
CAPITAL MORTGAGE LOAN
CORPORATION and CHRISTOPHER
MICHAEL MILLER

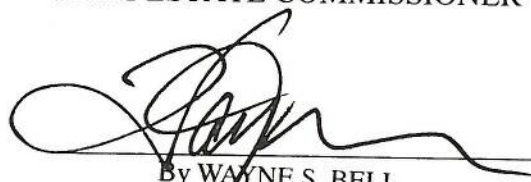
DATED

DENNIS M. WILSON
Attorney for Respondent,
JACK ROLLAND EMERSON

The foregoing Stipulation and Agreement is hereby adopted by me as my Decision in this matter as to Respondents FIRST CAPITAL MORTGAGE LOAN CORPORATION, CHRISTOPHER MICHAEL MILLER and JACK ROLLAND EMERSON, and shall become effective at 12 o'clock noon on DEC 21 2012

IT IS SO ORDERED 11/9/2012

REAL ESTATE COMMISSIONER



By WAYNE S. BELL
Chief Counsel

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

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

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11 TO:

12 FIRST CAPITAL MORTGAGE LOAN
13 CORPORATION
14 and JACK ROLLAND EMERSON.

) NO. H-5467 SAC
) NOTICE CONCERNING
) COSTS OF AUDITS

15 The attached Decision contains a determination by the Real Estate Commissioner
16 that you have either violated Section 10145 of the Business and Professions Code or a
17 regulation of the Commissioner interpreting Section 10145, or both. Section 10148 of the
18 Business and Professions Code provides that if this finding(s) becomes final, the Commissioner
19 may charge you for the costs of any audits conducted as a result of the violations found herein.
20 Enclosed for your reference is a copy of the provisions of Section 10148 of the Business and
21 Professions Code.

22 DATED: November 30, 2012

24 
25 JOHN W. BARRON
26 Real Estate Counsel
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