

COPY

*Flag
Sac*

x2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Department of Real Estate
185 Berry Street, Room 3400
San Francisco, CA 94107-1770

Telephone: (415) 904-5917

FILED
MAY 04 1993

DEPARTMENT OF REAL ESTATE

By Victoria Dillon
Victoria Dillon

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
)	No. H-6789 SF
CALIFORNIA MORTGAGE FINANCIAL SERVICES, INC.,)	<u>STIPULATION AND AGREEMENT</u>
DAVID ALAN MORGENSEN, and)	<u>IN SETTLEMENT AND ORDER</u>
JAMES ARTHUR CAMPAGNA,)	
)	
Respondents.)	

It is hereby stipulated by and between DAVID ALAN MORGENSEN only (Respondent) and the Complainant, acting by and through John Van Driel, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing the Accusation (Accusation) filed on September 23, 1992 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 as it relates to Respondent only, which hearing was to be held in accordance with the

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

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

8 3. On October 6, 1992, Respondent filed his Notice of
9 Defense pursuant to Section 11505 of the Government Code for the
10 purpose of requesting a hearing on the allegations in the
11 Accusation. Respondent hereby freely and voluntarily withdraws
12 said Notice of Defense. Respondent acknowledges that he
13 understands that by withdrawing said Notice of Defense he will
14 thereby waive his right to require the Commissioner to prove the
15 allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA.

17 4. Respondent has read the Discovery Provisions of the
18 APA and is aware of his right to conduct discovery in the
19 proceeding, and by entering into this stipulation, freely and
20 voluntarily waives his right to conduct further discovery.

21 5. Respondent, pursuant to the limitations set forth
22 below, hereby admits that the factual allegations (or findings of
23 fact as set forth below) of the Accusation as they relate to DAVID
24 ALAN MORGENSEN only are true and correct and the Real Estate
25 Commissioner shall not be required to provide further evidence of
26 such allegations. The admissions of fact made herein are made
27

1 solely for the purpose of establishing jurisdiction for the
2 Commissioner to take disciplinary action and are made solely in
3 reference to this proceeding and any subsequent proceeding before
4 the Commissioner and may not be used in or as a part of any other
5 civil action or criminal action now pending or which may be filed
6 against Respondent pursuant to the provisions of Section 1152 of
7 the California Evidence Code. A true copy of the Accusation is
8 attached hereto as Annex A and incorporated herein by reference.

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

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

DETERMINATION OF ISSUES

1
2 By reason of the foregoing stipulations, admissions and
3 waivers and for the purpose of settlement of the pending
4 Accusation without a hearing, it is stipulated and agreed that the
5 following determination of issues shall be made:

I

6
7 The acts and/or omissions of Respondent, as described in
8 Paragraphs VII through XIV and XVI of the Accusation violated
9 Section 10159.2 of the Business and Professions Code (Code) and
10 are grounds for the suspension or revocation of the real estate
11 license and license rights of Respondent under the provision of
12 Sections 10177(g) and (h) of the Code.

ORDER

13
14 1. All real estate licenses and license rights of
15 Respondent DAVID ALAN MORGENSEN are revoked.

16 2. A restricted real estate broker license shall be
17 issued to Respondent pursuant to Section 10156.6 of the Code if he
18 makes application therefor and pays to the Department the
19 appropriate fee for said license within thirty (30) days of the
20 effective date of the decision.

21 3. The restricted license issued to Respondent shall
22 be subject to all of the provisions of Section 10156.7 of the
23 Business and Professions Code and to the following limitations
24 imposed under authority of Section 10156.6 of said Code:

25 1) The restricted license may be suspended prior
26 to hearing by order of the Real Estate Commissioner in the event
27 of Respondent's conviction or plea of nolo contendere to a crime
which bears a substantial relationship to Respondent's fitness or
capacity as a real estate licensee, or upon evidence satisfactory

1 to the Commissioner that Respondent has violated the provisions of
2 the California Real Estate Law, the Subdivided Lands Law,
3 Regulations of the Real Estate Commissioner or conditions
4 attaching to this restricted license.

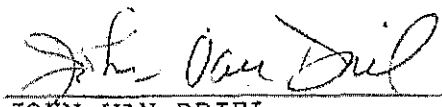
5 2) Respondent shall, within (6) months from the
6 effective date of this decision, present evidence satisfactory to
7 the Real Estate Commissioner that he has, since the most recent
8 issuance of an original or renewal real estate license, taken and
9 successfully completed the continuing education requirements of
10 Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a
11 real estate license. If Respondent fails to satisfy this
12 condition, the Commissioner may order the suspension of the
13 restricted license until the Respondent presents such evidence.
14 The Commissioner shall afford Respondent the opportunity for
15 hearing pursuant to the Administrative Procedure Act to present
16 such evidence.

17 3) Respondent shall submit periodic reports to
18 the Commissioner regarding his compliance with the terms of this
19 restricted license, at such intervals and in such form as directed
20 by the Commissioner.

21 4) Respondent shall not be eligible to apply for
22 the issuance of an unrestricted real estate license, nor the
23 removal of any of the conditions of the restricted license, until
24 one (1) year has elapsed from the date of issuance of the
25 restricted license.

26 4. Between approximately six and twelve months from the
27 effective date of the Decision, the Department will perform a
"chargeable follow-up audit" on the real estate related books and
records of Respondent to verify Respondent's future compliance
with the Real Estate Law and Regulations. The Department will
provide Respondent with an estimate of the cost of the audit
before the work is done. The cost of the audit, as estimated by
the Department, will be paid by Respondent upon receipt of a
billing statement rendered upon completion of the audit.

28 DATED: 4-6-45


JOHN VAN DRIEL
Counsel for the Complainant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

APPROVED AS TO FORM:

DATED: 3-31-93 Frank H. Russow
FRANK H. RUSSOW
Counsel for Respondent

I have read the Stipulation in Settlement 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 Administrative Procedure Act, and I willingly 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: 3-31-93 David Alan Morgensen
DAVID ALAN MORGENSEN

DECISION AND ORDER

The foregoing Stipulation and Agreement in Settlement is hereby adopted as my Decision and Order and shall become effective at 12 o'clock noon on May 24, 1993.

IT IS SO ORDERED 4 22, 1993.

CLARK WALLACE
Real Estate Commissioner

Clark Wallace