

COPY

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

FILED
AUG 15 1996

3 Telephone: (415) 904-5917

DEPARTMENT OF REAL ESTATE

By *Jyda Montiel*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 ROBERT GARY DEMBROWSKI and)
CAPITAL INVESTMENTS, INC.,)
14 Respondents.)

H-7302 SF

STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

15 It is hereby stipulated by and between ROBERT GARY
16 DEMBROWSKI and CAPITAL INVESTMENTS, INC. (referred to as
17 Respondents), and their attorney of record, John J. Dacey, Dacey &
18 Niesar, and the Complainant, acting by and through Deidre L.
19 Johnson, Counsel for the Department of Real Estate, as follows for
20 the purpose of settling and disposing of the Accusation filed on
21 November 15, 1995, in this matter:

22 1. All issues which were to be contested and all
23 evidence which was to be presented by Complainant and Respondents
24 at a formal hearing on the Accusation, which hearing was to be
25 held in accordance with the provisions of the Administrative
26 Procedure Act (APA), shall instead and in place thereof be
27

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

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

7 3. On December 1, 1995, Respondents filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for the
9 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 thereby waive their rights to require the Commissioner to prove
14 the allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that they will waive
16 other rights afforded to them in connection with the hearing such
17 as the right to present evidence in defense of the allegations in
18 the Accusation and the right to cross-examine witnesses.

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

24 5. Without admitting the truth of the allegations
25 contained in Paragraphs IV, and VI through XXVI of the Accusation,
26 Respondents stipulate that they will not interpose a defense
27 thereto. Respondents stipulate that the Department may issue



1 findings and determinations of issues that the acts and/or
2 omissions of Respondents as stipulated above constitute grounds
3 for disciplinary action as set forth herein. A true copy of the
4 Accusation is attached hereto as Annex A and incorporated herein
5 by reference.

6 6. No additional documentary, testimonial, or other
7 evidence, except that which is necessary to establish
8 Complainant's jurisdiction, shall be required to be presented by
9 Complainant at any hearing in this proceeding in order to prove
10 the Accusation as above stipulated.

11 7. Respondents enter into this stipulation for purposes
12 of this Accusation only, and the execution of this stipulation
13 shall not be construed to be an admission of liability except as
14 may pertain to the grounds for the stipulation, and shall not be
15 construed to be an admission for any purpose whatsoever, pursuant
16 to the provisions of California Evidence Code Section 1152.

17 8. It is understood by the parties that the Real Estate
18 Commissioner may adopt the Stipulation and Agreement in Settlement
19 as his decision in this matter thereby imposing the penalty and
20 sanctions on Respondents' real estate licenses and license rights
21 as set forth in the below "Order". In the event that the
22 Commissioner in his discretion does not adopt the Stipulation and
23 Agreement in Settlement, it shall be void and of no effect, and
24 Respondents shall retain the right to a hearing and proceeding on
25 the Accusation under all the provisions of the APA and shall not
26 be bound by any admission or waiver made herein.

27



1 B. The first thirty (30) days of said suspension as to
2 each Respondent are stayed for a period of one (1) year on the
3 condition that no cause for disciplinary action against each
4 Respondent occurs within one (1) year from the effective date of
5 the Decision. If the Real Estate Commissioner determines that
6 further cause for disciplinary action against each Respondent's
7 license has occurred within one (1) year from the effective date
8 of the Decision, the stay of suspension hereby granted to that
9 Respondent, or such portion of the stay as the Real Estate
10 Commissioner shall deem appropriate, shall be vacated. If no
11 further cause for disciplinary action occurs within said time
12 period, the stay hereby granted in this subparagraph B to each
13 Respondent shall become permanent.

14 C. If each Respondent petitions the Department in
15 writing pursuant to Section 10175.2 of the Code, the remaining
16 thirty (30) days of said suspension shall be stayed in whole or in
17 part upon the following conditions:

18 (1) Each Respondent shall pay a monetary penalty
19 pursuant to Section 10175.2 of the Code at the rate
20 of \$100.00 for each day of suspension for a maximum
21 monetary penalty of \$ 3,000.00 as to each
22 Respondent, and a total maximum monetary penalty of
23 \$6,000 for both Respondents.

24 (2) Said payment(s) shall be in the form of a cashier's
25 check or certified check made payable to the
26 Recovery Account of the Real Estate Fund. Said
27 check(s) must be delivered to the Department prior



1 to the effective date of the Decision in this
2 matter.

3 (3) No further cause for disciplinary action against
4 the real estate license of each Respondent occurs
5 within one (1) year from the effective date of the
6 Decision.

7 (4) If each Respondent fails to pay the monetary
8 penalty in accordance with the terms and conditions
9 of the Decision, the Commissioner may, without a
10 hearing, order the immediate execution of all or
11 any part of the stayed suspension as to that
12 Respondent, in which event, that Respondent shall
13 not be entitled to any repayment nor credit,
14 prorated or otherwise, for money paid to the
15 Department under the terms of the Decision.

16 (5) If each Respondent pays the monetary penalty and if
17 no further cause for disciplinary action against
18 the real estate licenses of that Respondent occurs
19 within one (1) year from the effective date of the
20 Decision, the stay hereby granted in this
21 subparagraph C. to that Respondent shall become
22 permanent. If the Real Estate Commissioner
23 determines that further cause for disciplinary
24 action against each Respondent's license has
25 occurred within one (1) year from the effective
26 date of the Decision, the stay of suspension hereby
27 granted to that Respondent, or such portion of the



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stay as the Real Estate Commissioner shall deem appropriate, shall be vacated.

DATED: June 19, 1996

Deidre L. Johnson
DEIDRE L. JOHNSON
Counsel for Complainant

* * *

I have read the Stipulation and Agreement in Settlement,
have consulted with an attorney, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given 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 that 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: 6-14-96

Robert G. Dembrowski
ROBERT GARY DEMBROWSKI
Respondent

CAPITAL INVESTMENTS, INC.
Respondent

DATED: 6-14-96

Robert G. Dembrowski
by: ROBERT GARY DEMBROWSKI

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APPROVED AS TO FORM:

DATED: 8/17/96

John J. Dacey
JOHN J. DACEY
DACEY & NIESAR
Attorney for Respondent

* * *

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 September 4th, 1996.

IT IS SO ORDERED 7/29, 1996.

JIM ANTT, JR.
Real Estate Commissioner

Jim Antt Jr.

Flag

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FILED
JAN 26 1996

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Lynda Montiel
Lynda Montiel

In the Matter of the Accusation of

ROBERT GARY DEMBROWSKI and
CAPITAL INVESTMENTS, INC.,

Case No. H-7302 SF

OAH No. N 9512237

Respondent

NOTICE OF HEARING ON ACCUSATION

To the above named respondent:

You are hereby notified that a hearing will be held before the Department of Real Estate at _____
OFFICE OF ADMINISTRATIVE HEARINGS, in the WORLD SAVINGS TOWER,
1970 Broadway, 2nd Floor, Oakland, CA 94612-3049

on Tues. & Weds., June 18 & June 19, 1996 (2 days) at the hour of 9:00 am
or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

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. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

DEPARTMENT OF REAL ESTATE

Dated: January 26, 1996

By Deidre L. Johnson
DEIDRE L. JOHNSON, Counsel

FILED
NOV 15 1995

DEPARTMENT OF REAL ESTATE

Lynda Monheil
Lynda Monheil

1 DEIDRE L. JOHNSON, Counsel
2 Department of Real Estate
3 185 Berry Street, Room 3400
4 San Francisco, CA 94107-1770
5 Telephone: (415) 904-5917
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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)	
ROBERT GARY DEMBROWSKI and,)	No. H-7302 SF
CAPITAL INVESTMENTS, INC.,)	
Respondents.)	<u>ACCUSATION</u>

16 The Complainant, Les R. Bettencourt, a Deputy Real
17 Estate Commissioner of the State of California, for causes of
18 Accusation against ROBERT GARY DEMBROWSKI and CAPITAL INVESTMENTS,
19 INC., alleges as follows:

FIRST CAUSE OF ACTION

I

22 The Complainant, Les R. Bettencourt, a Deputy Real
23 Estate Commissioner of the State of California, makes this
24 Accusation in his official capacity and not otherwise.

II

26 Respondents CAPITAL INVESTMENTS, INC. and ROBERT GARY
27 DEMBROWSKI are presently licensed and/or have license rights under

1 the Real Estate Law (Part 1 of Division 4 of the Business and
2 Professions Code, hereafter the Code).

3 III

4 CAPITAL INVESTMENTS, INC. (hereafter CII) was and is
5 licensed by the State of California Department of Real Estate
6 (hereafter Department) as a real estate broker corporation, by and
7 through ROBERT GARY DEMBROWSKI (hereafter DEMBROWSKI) as its
8 designated broker officer. At all times mentioned, DEMBROWSKI was
9 and is licensed as an individual real estate broker, and also
10 licensed as the designated officer of CII.

11 IV

12 On or about May 15, 1995, Respondent CII purchased 100%
13 of the shares of NORTHCOAST LOAN SERVICES, INC. (hereafter NLS),
14 located in Eureka, California. CII had hired and retained NLS as
15 a mortgage loan broker to service its loans. On or about May 15,
16 1995, CII and DEMBROWSKI learned that NLS did not have a real
17 estate license from the Department.

18 V

19 NLS made application to the Department for a real estate
20 broker corporation license on or about June 9, 1995. The
21 application names DEMBROWSKI as its President and proposed
22 designated broker officer.

23 VI

24 At no time herein mentioned was NLS licensed by the
25 Department as a real estate broker corporation. Whenever
26 reference is made in an allegation in this pleading to an act or
27 omission of "NLS", such allegation shall be deemed to mean that

1 NLS and/or the officers, employees, and agents employed by or
2 associated with NLS committed such act or omission while engaged
3 in the furtherance of the business or operation of NLS, and while
4 acting within the course and scope of the authority and
5 employment.

6 VII

7 During a period of time commencing at least on or after
8 May 15, 1995, NLS solicited and/or negotiated with investors
9 and/or owners of promissory notes secured directly or indirectly
10 by liens on real property, for the purpose of servicing such loans
11 for or in expectation of compensation, and serviced such loans.

12 VIII

13 NLS prepared, caused to be prepared, permitted,
14 authorized and/or offered to investors and/or note owners a
15 written contract for the above loan servicing. With respect to
16 compensation, the contract provides that for an initial set up
17 charge of \$25.00 per loan, and a note collection fee of \$10.00 per
18 account per month, NLS agrees to and does collect all payments on
19 each note, and disburses payments to the beneficiary.

20 IX

21 The acts, activities and services described in
22 Paragraphs III through VIII above are acts, activities and
23 services requiring a real estate broker license under the
24 provisions of Section 10131(d) of the Code. CII and DEMBROWSKI
25 employed and/or permitted the above acts, activities and services
26 to be performed on NLS's behalf by persons who were not licensed
27

1 by the Department either as a real estate broker or salesperson,
2 including but not limited to Karen Mesa and/or Jodie Bubier.

3 X

4 CII and DEMBROWSKI employed and/or compensated NLS for
5 engaging in the activities described in Paragraphs III through
6 VIII above with respect to CII loans without first obtaining a
7 real estate broker corporation license for NLS from the
8 Department.

9 XI

10 The acts and/or omissions of CII and DEMBROWSKI alleged
11 in Paragraph X above constitute grounds for disciplinary action
12 pursuant to Section 10137 of the Code.

13 XII

14 In the alternative, as the owners and responsible
15 licensed brokers for NLS, Respondents CII and DEMBROWSKI stood in
16 the shoes of NLS, and engaging in the activities described in
17 Paragraphs III through VIII above as NLS without first obtaining a
18 real estate broker corporation license for NLS from the
19 Department. Said acts and/or omissions violate Section 10130 of
20 the Code and constitute grounds for disciplinary action pursuant
21 to Section 10177(d) of the Code.

22 XIII

23 The acts and/or omissions of CII and DEMBROWSKI alleged
24 above would have warranted the denial of an application for a real
25 estate license for violation of Sections 10130 and 10137 of the
26 Code, and constitute grounds for disciplinary action under
27 Sections 10177(f) of the Code.

1 account per month to collect all payments on each note, and
2 disburse payments to the beneficiary. On or about July 22, 1995,
3 Risley received an information packet from NLS, including but not
4 limited to two NLS collection or loan servicing contracts
5 containing the compensation terms described above.

6 XVIII

7 NLS sent to Risley in the above packet a letter of
8 recommendation from CII dated July 19, 1995, signed by DEMBROWSKI
9 as President, purporting to be an independent, satisfied customer
10 of NLS. Risley then telephoned DEMBROWSKI in Southern California,
11 and he purported to confirm that he and his company were
12 independent, satisfied customers. CII and DEMBROWSKI failed to
13 disclose to Risley that: (1) CII was and is the owner of 100% of
14 the shares of NLS; (2) DEMBROWSKI was and is nominated to be the
15 designated broker officer of NLS and was acting as the de facto
16 broker for the company; (3) NLS did not and does not have a real
17 estate license authorizing it to perform the services offered; and
18 (4) NLS was and is under an order to desist and refrain from any
19 and all conduct requiring a real estate license.

20 XIX

21 CII and DEMBROWSKI failed to disclose the above material
22 information to Risley for the purpose of inducing "Susan Carlson"
23 into agreeing to hire or retain NLS to service "Carlson's" secured
24 real estate loans for the fees and charges claimed in above the
25 collection agreements that would then inure to the benefit of CII
26 and DEMBROWSKI.

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XX

CII and DEMBROWSKI knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation to Risley of material false statements or representations about NLS by virtue of the acts and/or omissions described above. Said acts and/or omissions of CII and DEMBROWSKI constitute grounds for disciplinary action under Section 10177(c) of the Code.

XXI

The acts, activities and services performed by Mesa in the above described telephone conversations and mailing are acts, activities and services requiring a real estate broker license under the provisions of Section 10131(d) of the Code. CII and DEMBROWSKI permitted the above acts, activities and services to be performed on behalf of NLS by Mesa, and so employed Mesa, when she was not licensed by the Department either as a real estate broker or salesperson. Said acts and/or omissions of CII and DEMBROWSKI constitute grounds for disciplinary action under Section 10137 of the Code.

XXII

The acts and/or omissions of CII and DEMBROWSKI alleged above would have warranted the denial of an application for a real estate license for violation of Sections 10130 and 10137 of the Code, and constitute grounds for disciplinary action under Sections 10177(d), 10177(f), and/or 10177(j) of the Code.

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XXIII

CII and DEMBROWSKI were and are persons to whom the above described Order to Desist and Refrain was and is directed, and failed and/or refused to immediately cease the activity OF NLS described in the order upon receipt of the order. Said acts and/or omissions violate Section 10086 of the Code and constitute cause for disciplinary action under Section 10177(d) of the Code.

THIRD CAUSE OF ACTION

XXIV

All of the allegations contained in the first and second causes of action above are incorporated herein as though fully set forth at this point.

XXV

At all times above mentioned, DEMBROWSKI was responsible, as the designated broker officer of CII, and as the de facto broker for NLS, for the supervision and control of the activities conducted on behalf of NLS by its officers and employees, and failed to so exercise reasonable supervision and control. DEMBROWSKI was negligent and/or incompetent in performing acts for which a real estate license is required, in that he knew or should have known all the facts set forth in the above allegations, and in that he could have and should have taken steps to assure NLS's full compliance with the Real Estate Law and failed to do so. In the alternative, DEMBROWSKI knew or acted with reckless disregard for all the facts set forth in the above allegations, and failed and refused to assure NLS's full compliance with the Real Estate Law.

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XXVI

The above acts and/or omissions of DEMBROWSKI constitute grounds for disciplinary action under the provisions of Sections 10177(g), 10177(h), and/or 10177(j) of the Code.

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


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at San Francisco, California
this 14th day of November, 1995.