

1 DEPARTMENT OF REAL ESTATE
2 P.O. Box 187000
3 Sacramento, CA 95818-7000
4
5 Telephone: (916) 227-0789
6
7

FILED
JAN 13 1999

DEPARTMENT OF REAL ESTATE

By Kathleen Contreras

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 . RAYMOND A. HERMAN,) NO. H-7610 SF
13 Respondent.) STIPULATION AND AGREEMENT
14)

15 It is hereby stipulated by and between RAYMOND A. HERMAN
16 ("Respondent") acting by and through his attorney, David P.
17 Lanferman; and the Complainant, acting by and through Thomas C.
18 Lasken, Counsel for the Department of Real Estate; as follows, for
19 the purpose of settling and disposing of the Accusation filed on
20 August 14, 1998, in this matter:

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondent
23 at a formal hearing on the Accusation, which hearing was to be
24 held in accordance with the provisions of the Administrative
25 Procedure Act (APA) (Government Code Section 11500 et seq.), shall
26 instead and in place thereof be submitted solely on the basis of
27 the provisions of this Stipulation and Agreement.

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

5 3. On August 24, 1998, Respondent filed his Notice of
6 Defense pursuant to Section 11505 of the Government Code for the
7 purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 his Notice of Defense. Respondent acknowledges that by
10 withdrawing said Notice of Defense he will thereby waive his right
11 to require the Commissioner to prove the allegations in the
12 Accusation at a contested hearing held in accordance with the
13 provisions of the APA and that he will waive other rights afforded
14 to him in connection with the hearing such as the right to present
15 evidence in defense of the allegations in the Accusation and the
16 right to cross-examine witnesses.

17 4. This Stipulation is based on the factual
18 allegations contained in the Accusation. In the interests of
19 expedience and economy, Respondent chooses not to contest these
20 allegations, but to remain silent and understands that, as a
21 result thereof, these factual allegations, without being admitted
22 or denied, will serve as a prima facie basis for the disciplinary
23 action stipulated to herein. The Real Estate Commissioner shall
24 not be required to provide further evidence to prove said factual
25 allegations.

26 5. It is understood by the parties that the Real Estate
27 Commissioner may adopt the Stipulation and Agreement as his

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

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

15 7. Respondent has received, read, and understands the
16 "Notice Concerning Costs of Subsequent Audits". Respondent
17 understands that by agreeing to this Stipulation and Agreement in
18 Settlement, the findings set forth below in the DETERMINATION OF
19 ISSUES become final, and that the Commissioner may charge
20 Respondent for the cost of any audit conducted pursuant to Section
21 10148 of the Business and Professions Code to determine if the
22 violations have been corrected. The maximum costs of said audit
23 will not exceed \$2,601.72.

24 DETERMINATION OF ISSUES
25

26 By reason of the foregoing stipulations, admissions and
27 waivers, and solely for the purpose of settlement of the pending

1 Accusation without a hearing, it is stipulated and agreed that the
2 following determination of issues shall be made:

3 I

4 The conduct of the Respondent, as described in the
5 Accusation, constitutes cause for the suspension or revocation of
6 the real estate license and license rights of Respondent under the
7 provisions of Section 10177(d) of the California Business and
8 Professions Code ("Code").

9
10 ORDER

11 A. The real estate broker license and all license rights of
12 Respondent under the Real Estate Law are revoked.

13 B. A restricted real estate broker license shall be issued to
14 Respondent pursuant to Business and Professions Code Section
15 10156.5, if Respondent makes application therefor and pays to
16 the Department the appropriate fee for said license within
17 ninety (90) days from the effective date of this ORDER.

18 C. The restricted license issued to Respondent shall be subject
19 to all the provisions of Section 10156.7 of the Business and
20 Professions Code and to the following limitations, conditions
21 and restrictions imposed under authority of Section 10156.6
22 of said Code:

23 (1) The license shall not confer any property right in the
24 privileges to be exercised, and the Real Estate
25 Commissioner may by appropriate order suspend the right
26 to exercise any privileges granted under the restricted
27 license in the event of:

(b) The receipt of evidence that Respondent has
violated provisions of the California Real Estate
Law, Subdivided Lands Law, Regulations of the Real
Estate Commissioner or conditions attaching to the
restricted license.

D. Respondent shall pay, pursuant to Section 10148 of the
Business and Professions Code, the Commissioner's reasonable
cost for an audit to determine if Respondent has corrected
the trust fund violations as set forth in the Determination
of Issues above. In calculating the amount of the
Commissioner's reasonable costs, the Commissioner may use the
estimated average hourly salary for all persons performing
audits of real estate brokers, and shall include an
allocation for travel costs, including mileage, time to and
from the auditor's place of work, and per diem. The
Commissioner's reasonable costs shall in no event exceed
\$2,601.72.

1 (a) Respondent shall pay such cost within 60 days of receipt
2 of an invoice from the Commissioner detailing the
3 activities performed during the audit and the amount of
4 time spent performing those activities;

5 (b) If Respondent fails to pay, within 60 days from receipt
6 of the invoice specified above, the Commissioner's
7 reasonable costs for an audit to determine if Respondent
8 has corrected the violations found as set forth in the
9 Determination of Issues above, the Commissioner may
10 order the indefinite suspension of Respondent's real
11 estate licenses and license rights. The suspension
12 shall remain in effect until payment is made in full, or
13 until Respondent enters into an agreement satisfactory
14 to the Commissioner to provide for such payment. The
15 Commissioner may impose further reasonable disciplinary
16 terms and conditions upon Respondent's real estate
17 license and license rights as part of any such
18 agreement.

19 E. Respondent shall, within six (6) months from the effective
20 date of the restricted license, take and pass the
21 Professional Responsibility Examination administered by the
22 Department including the payment of the appropriate
23 examination fee. If Respondent fails to satisfy this
24 condition, the Commissioner may order the suspension of the
25 restricted license until Respondent passes the examination.

26 F. Any restricted real estate broker license issued to
27 Respondent may be suspended or revoked for a violation by

DEC-08-1988 TUE 11:24 AM DRE-SACRAMENTO LEGAL

FAX NO. 9162279458

P. 08

1 Respondents of any of the conditions attaching to the
2 restricted license.

3
4 December 17, 1988

5 DATED

6 Thomas C. Lasken

7 THOMAS C. LASKEN, Counsel
8 DEPARTMENT OF REAL ESTATE

9 * * *

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

21 December 9, 1988

22 DATED

23 Raymond A. Herman

24 RAYMOND A. HERMAN
25 Respondent

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

28 Dec 16 1988

29 DATED

30 David P. Lanferman

31 DAVID P. LANFERMAN
32 Attorney for Respondent

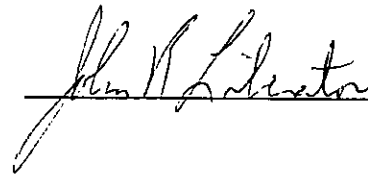
33 * * *

34 - 7 -

1 The foregoing Stipulation and Agreement is hereby
2 adopted by the Real Estate Commissioner as his Decision and Order
3 and shall become effective at 12 o'clock noon on
4 February 2, 1999.
5

6 IT IS SO ORDERED January 7, 1999.

7 JOHN R. LIBERATOR
8 Acting Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By Kathleen Contreras

In the Matter of the Accusation of

RAYMOND M. HERMAN,

Case No. H-7610 SF

OAH No. N-1998100338

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 _____

The Office of Administrative Hearings, The Elihu Harris State

Bulding, 1515 Clay Street, Suite 206, Oakland, California 94612

on December 11, 1998, at the hour of 9:00 AM,
or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: October 30, 1998

By Thomas C. Lasken
THOMAS C. LASKEN Counsel

1 THOMAS C. LASKEN, Counsel
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

FILED
AUG 14 1998
DEPARTMENT OF REAL ESTATE

6 R
7 Def

By James L. Lasken

8 At

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 RAYMOND A. HERMAN,)
13 Respondent.)

NO. H-7610 SF

ACCUSATION

14
15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California, for cause of
17 Accusation against RAYMOND A. HERMAN, individually and doing
18 business as "Key Mortgage Brokers", is informed and alleges as
19 follows:

20 I

21 The Complainant, Les R. Bettencourt, a Deputy Real
22 Estate Commissioner of the State of California, makes this
23 Accusation in his official capacity.

24 II

25 At all times herein mentioned, Respondent RAYMOND A.
26 HERMAN (hereinafter "Respondent") was licensed and/or had license
27 rights under the Real Estate Law, Part 1 of Division 4 of the



1 Business and Professions Code (hereinafter "Code") as a real
2 estate broker, individually and doing business as "Key Mortgage
3 Brokers".

4 III

5 At all times mentioned herein, Respondent engaged in the
6 business of, acted in the capacity of, advertised or assumed to
7 act as a real estate broker within the State of California,
8 including the operation and conduct of a mortgage loan brokerage
9 business with the public wherein lenders and borrowers were
10 solicited for loans secured directly or collaterally by liens on
11 real property, wherein such loans were arranged, negotiated,
12 processed, and consummated on behalf of others for compensation or
13 in expectation of compensation.

14 IV

15 During the course of the mortgage loan brokerage
16 activities described in Paragraph III above, Respondent received
17 and disbursed funds held in trust on behalf of another or others.

18 V

19 Within the three-year period immediately preceding the
20 filing of this Accusation, Respondent maintained the following
21 trust accounts for his mortgage loan business:

22	<u>Account Name and Number</u>	<u>Bank</u>
23		
24	Key Mortgage Brokers Trust Account	Community First Nat'l Bank
25	#3403037	2125 Second Street
	(hereinafter "Trust #1)	Livermore, CA 94550
26	Key Mortgage Brokers Trustee Account	Bank of America
27	#00137-01494	1748 Railroad Avenue
	(hereinafter "Trust #2)	Livermore, CA 94550



1 VI

2 Commencing on December 9, 1997, and continuing
3 through January 13, 1998, an investigative audit was made by
4 the Department of Real Estate (hereinafter "Department") of
5 Respondent's records for the period of June 30, 1995, through
6 October 31, 1997, as those records relate to Respondent's licensed
7 activities in his mortgage loan business.

8 VII

9 During the three-year period immediately preceding
10 the filing of this Accusation, the trust accounts described in
11 Paragraph V were not in the name of Respondent as trustee at a
12 bank or other financial institution as required by Section 2832
13 of Title 10, California Code of Regulations (hereinafter
14 "Regulations").

15 VIII

16 During the three-year period immediately preceding
17 the filing of this Accusation, Respondent allowed withdrawal
18 from the trust accounts by unlicensed persons who did not have
19 fidelity bond coverage, in violation of Section 2834 of the
20 Regulations.

21 IX

22 Within the three years immediately preceding the filing
23 of this Accusation, Respondent failed to retain, and/or to make
24 available for examination, inspection, and copying by the
25 designated representative of the Commissioner, copies of all
26 listings, deposit receipts, canceled checks, trust records, and
27 other documents executed by him or obtained by him in connection



1 with transactions for which a real estate broker license is
2 required, in violation of Section 10148 of the Code.


3 X

4 Within the three-year period immediately preceding the
5 filing of this Accusation, while conducting business as a real
6 estate broker at 1713 Second Street, Livermore, California,
7 Respondent failed to obtain a branch office license as required by
8 Section 10163 of the Code, and failed to file with the
9 Commissioner the address of such branch office as required by
10 Section 2715 of the Regulations.

11 XI

12 Respondent's acts and omissions alleged above in
13 Paragraphs VII through X constitute cause for discipline under the
14 provisions of Section 10177(d) of the Code.

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

22
23 
24 LES R. BETTENCOURT
25 Deputy Real Estate Commissioner

26 Dated at San Francisco, California,
27 this 6th day of August, 1998.