

1 Department of Real Estate
P. O. Box 187000
2 Sacramento, CA 95818-7000
3 Telephone: (916) 227-0789

FILED
FEB - 4 2000

DEPARTMENT OF REAL ESTATE

By *Laurie A. Zier*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-7743 SF
12 JAMES ALLEN CLEMONS,) OAH NO. N-1999090132
13 Respondents.) STIPULATION AND AGREEMENT

14
15 It is hereby stipulated by and between Respondent
16 JAMES ALLEN CLEMONS (hereinafter "Respondent"), and the
17 Complainant, acting by and through David A. Peters, Counsel for
18 the Department of Real Estate, as follows for the purpose of
19 settling and disposing of the Accusation filed on August 6,
20 1999, in this matter (hereinafter "the Accusation"):

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

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

5 3. On September 10, 1999, Respondent filed a Notice
6 of Defense pursuant to Section 11505 of the Government Code for
7 the purpose of requesting a hearing on the allegations in the
8 Accusation. Respondent hereby freely and voluntarily withdraws
9 said Notice of Defense. Respondent acknowledges that
10 Respondent understands that by withdrawing said Notice of
11 Defense Respondents will thereby waive Respondent's right to
12 require the Commissioner to prove the allegations in the
13 Accusation at a contested hearing held in accordance with the
14 provisions of the APA and that Respondent will waive other
15 rights afforded to Respondent in connection with the hearing
16 such as the right to present evidence in defense of the
17 allegations in the Accusation and the right to cross-examine
18 witnesses.

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

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

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

19 7. Respondent understands that by agreeing to this
20 Stipulation and Agreement in Settlement, Respondent agrees to
21 pay, pursuant to Section 10148 of the Business and Professions
22 Code, the cost of the audit which led to this disciplinary
23 action. The amount of said costs is \$2,402.58.

24 8. Respondent has received, read, and understands
25 the "Notice Concerning Costs of Subsequent Audit.". Respondent
26 further understands that by agreeing to this Stipulation and
27 Agreement in Settlement, the findings set forth below in the

1 DETERMINATION OF ISSUES become final, and that the Commissioner
2 may charge Respondent for the costs of any subsequent audit
3 conducted pursuant to Section 10148 of the Business and
4 Professions Code to determine if the violations have been
5 corrected. The maximum costs of said audit will not exceed
6 \$5,796.74.

7 DETERMINATION OF ISSUES

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

12 I

13 The conduct of Respondent JAMES ALLEN CLEMONS, as
14 described in the Accusation, constitutes cause for the suspension
15 or revocation of the real estate license and license rights of
16 Respondent under the provisions of Section 10177(d) of the
17 Business and Professions Code in conjunction with Sections 10145
18 and 10229(j)(3) of the Business and Professions Code and Sections
19 2832, 2832.1, 2831.1 and 2831.2 of Title 10, California Code of
20 Regulations.

21 ORDER

22 I

23 The restricted real estate broker license and all
24 license rights of Respondent JAMES ALLEN CLEMONS under the Real
25 Estate Law are revoked; provided, however, a restricted real
26 estate broker license shall be issued to Respondent pursuant to
27 Section 10156.5 of the Business and Professions Code if

1 Respondent makes application therefor and pays to the Department
2 of Real Estate the appropriate fee for the restricted license
3 within ninety (90) days from the effective date of this
4 Decision. The restricted license issued to Respondent shall be
5 subject to all of the provisions of Section 10156.7 of the
6 Business and Professions Code and to the following limitations,
7 conditions and restrictions imposed under authority of Section
8 10156.6 of that Code:

9 1. The restricted license issued to Respondent may
10 be suspended prior to hearing by Order of the Real Estate
11 Commissioner in the event of Respondent's conviction or plea of
12 nolo contendere to a crime which is substantially related to
13 Respondent's fitness or capacity as a real estate licensee.

14 2. The restricted license issued to Respondent may
15 be suspended prior to hearing by Order of the Real Estate
16 Commissioner on evidence satisfactory to the Commissioner that
17 Respondent has violated provisions of the California Real Estate
18 Law, the Subdivided Lands Law, Regulations of the Real Estate
19 Commissioner or conditions attaching to the restricted license.

20 3. Respondent shall not be eligible to apply for the
21 issuance of an unrestricted real estate license nor for the
22 removal of any of the conditions, limitations or restrictions of
23 a restricted license until one (1) year has elapsed from the
24 effective date of this Decision.

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

13 5. Respondent shall, within six (6) months from the
14 effective date of this Decision, take and pass the Professional
15 Responsibility Examination administered by the Department
16 including the payment of the appropriate examination fee. If
17 Respondent fails to satisfy this condition, the Commissioner may
18 order suspension of Respondent's license until Respondent passes
19 the examination.

20 6. Pursuant to Section 10148 of the Business and
21 Professions Code, Respondent shall pay the Commissioner's
22 reasonable cost for: a) the audit which led to this
23 disciplinary action and, b) a subsequent audit to determine if
24 Respondent has corrected the trust fund violations found in
25 paragraph I of the Determination of Issues. In calculating the
26 amount of the Commissioner's reasonable cost, the Commissioner
27 may use the estimated average hourly salary for all persons

1 performing audits of real estate brokers, and shall include an
2 allocation for travel time to and from the auditor's place of
3 work. Respondent shall pay such cost within sixty (60) days of
4 receiving an invoice from the Commissioner detailing the
5 activities performed during the audit and the amount of time
6 spent performing those activities. The Commissioner may suspend
7 the restricted license issued to Respondent pending a hearing
8 held in accordance with Section 11500, et seq., of the
9 Government Code, if payment is not timely made as provided for
10 herein, or as provided for in a subsequent agreement between the
11 Respondent and the Commissioner. The suspension shall remain in
12 effect until payment is made in full or until Respondent enters
13 into an agreement satisfactory to the Commissioner to provide
14 for payment, or until a decision providing otherwise is adopted
15 following a hearing held pursuant to this condition.

16 7. Respondent shall prior to the effective date of
17 the Decision provide evidence satisfactory to the Commissioner
18 that Respondent has cured the trust fund shortages alleged in
19 the Accusation.

20 8. Any restricted real estate broker license issued
21 to Respondent may be suspended or revoked for a violation by
22 Respondent of any of the conditions attaching to the restricted
23 license.

24
25 12/15/99

26 DATED

24
25 *David A. Peters*

26 DAVID A. PETERS, Counsel
27 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.

December 15, 1999

DATED

James Allen Clemons

JAMES ALLEN CLEMONS
Respondent

* * *

The foregoing Stipulation and Agreement for
Settlement is hereby adopted by the Real Estate Commissioner as
his Decision and Order and shall become effective at 12 o'clock
noon on February 25, 2000

IT IS SO ORDERED

January 17, 2000

PAULA REDDISH ZINNEMANN
Real Estate Commissioner

Paula Reddish Zinnemann

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
OCT 27 1999

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of
JAMES ALLEN CLEMONS,

}

Case No. H-7743 SF
OAH No. N-1999090132

By Laurie A. Zain

Respondent

FIRST AMENDED
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, 1515 Clay Street, Suite 206,
Oakland, CA 94614

on Thursday, December 16, 1999, 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 27, 1999

By David A. Peters
DAVID A. PETERS Counsel

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
SEP 27 1999

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of
JAMES ALLEN CLEMONS,

Case No. H-7743 SF

OAH No. N-1999090132

By Laurel J. Zai

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, 1515 Clay Street, Suite 206
Oakland, CA 94614

on Tuesday, October 26, 1999, 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: September 27, 1999

By David A. Peters
DAVID A. PETERS Counsel

1 DAVID A. PETERS, Counsel (SBN 99528)
2 Department of Real Estate
3 P. O. Box 187000
4 Sacramento, CA 95818-7000
5 Telephone: (916) 227-0789
6 -or- (916) 227-0781 (Direct)
7

FILED
AUG 27 1999

DEPARTMENT OF REAL ESTATE
BY *Laurie A. Zain*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) No. H-7743 SF
12 JAMES ALLEN CLEMONS,) ACCUSATION
13 Respondents.)
14

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 Accusation against JAMES ALLEN CLEMONS dba California Secured
18 Funding, Framework Financial LP, and Cal West Investments
19 (hereinafter "Respondent"), is informed and alleges as 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.

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II

Respondent is presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code) (hereinafter "Code") as real estate broker.

III

At all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(d) of the Code, including the operation and conduct of a mortgage loan brokerage business with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, and wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation, and wherein such loans were serviced and payments thereon were collected on behalf of others.

IV

At various times herein mentioned, in the course of or incidental to the aforesaid mortgage loan brokerage business, Respondent also engaged in the business of, acted in the capacity of, advertised, or assumed to act as escrow holders or agents for the purpose of effecting mortgage loan transactions, and thereby acted or assumed to act within and under the exemption from the provisions of the Escrow Law as provided by Section 17006(d) of the Financial Code of the State of California.

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V

In acting as a mortgage loan broker, and as escrow holder and agent as described in Paragraphs III and IV above, Respondent received and disbursed funds held in trust on behalf of another or others.

VI

Within the three-year period immediately preceding the filing of this Accusation and continuing thereafter, Respondent maintained the following trust fund accounts:

<u>TITLE & ACCOUNT NO.</u>	<u>BANK</u>
James A. Clemons DBA California Secured Funding Escrow Account Account No. 017-005926 (hereinafter "Trust #1")	Bank of the West Campbell, California
California Secured Funding - Trustee Account Account No. 0442-209292 (hereinafter "Trust #2")	Wells Fargo Sacramento, California

Trust Account #1 was not in the name of Respondent as trustee at a bank or other financial institution as required by Section 2832 of Title 10, California Code of Regulations (hereinafter "Regulations").

VII

Within the three year period immediately preceding the filing of this Accusation through on or about April 30, 1998, Trust #2 was not in the name of Respondent as trustee at a bank or other financial institution as required by Section 2832 of the Regulations.

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VIII

In connection with the collection and disbursement of trust funds described in Paragraph V above, Respondent failed to deposit and maintain said trust funds in Trust #1 in such manner that as of January 31, 1998, there was a shortage of \$1,240.00 of trust funds.

IX

In connection with the collection and disbursement of trust funds described in Paragraph V above, Respondent failed to deposit and maintain said trust funds in Trust #2 in such manner that as of March 3, 1998, there was a shortage of \$3,184.51 of trust funds.

X

In connection with the collection and disbursement of trust funds described in Paragraph V above, Respondent failed to deposit and maintain said trust funds in Trust #1 in such manner that as of March 31, 1999, there was a shortage of \$5,013.00 of trust funds.

XI

In connection with the collection and disbursement of trust funds described in Paragraph V above, Respondent failed to deposit and maintain said trust funds in Trust #2 in such manner that as of March 31, 1999, there was a shortage of \$458.62 of trust funds.

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XII

Respondent failed to obtain the prior written consent of his principals for the reduction of the aggregate balance of trust funds in said bank account to an amount less than the existing aggregate trust fund liability to the owners of said funds in violation of Section 2832.1 of the Regulations.

XIII

Within the three-year period immediately preceding the filing of this Accusation through on or about April 30, 1998, in connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondent, as to Trust #2, failed to maintain a record of the balance of all separate beneficiary or transaction records being reconciled with the record of all trust funds received and disbursed as required by Section 2831.1 of the Regulations.

XIV

Beginning on or before October 1, 1998 and continuing through on or about March 31, 1999, in connection with the receipt and disbursement of trust funds described in Paragraph V above, Respondent failed to adequately maintain and perform, as to trust #2, a reconciliation with the records of all trust funds received and disbursed as required by Section 2831.1 of the Regulations, at least once per month, in conformance with Section 2831.2 of the Regulations.

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XV

Beginning on or about January 1, 1998 and continuing thereafter, Respondent failed to provide to the Department the Multilender Notification and Quarterly Multilender Reports required pursuant to Section 10229(j)(3) of the Code.

XVI


The facts alleged above are grounds for the suspension or revocation of Respondent's license under the following sections of the Code and Regulations:

- (1) As to Paragraph VI and VII, under Section 10177(d) of the Code in conjunction with Section 2832 of the Regulations;
- (2) As to Paragraphs VIII, IX, X, and XI, under Section 10177(d) of the Code in conjunction with Section 10145 of the Code;
- (3) As to Paragraph XII, under Section 10177(d) of the Code in conjunction with Section 2832.1 of the Regulations;
- (4) As to Paragraph XIII, under Section 10177(d) of the Code in conjunction with Section 2831.1 of the Regulations;
- (5) As to Paragraph XIV, under Section 10177(d) of the Code in conjunction with Section 2831.2 of the Regulations; and
- (6) As to Paragraph XV, under Section 10177(d) of the Code in conjunction with Section 10229(j)(3) of the Code.

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WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this 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 provisions of law.


LES R. BETTENCOURT
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 10th day of August, 1999.