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

FILED
JUL 07 2004

DEPARTMENT OF REAL ESTATE

By Jean Arnold

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)
13)
14 RMRF ENTERPRISES, INC. and) NO. H-8634 SF
15 DANIEL JOSEPH SHAW,)
16) STIPULATION AND AGREEMENT
17 Respondents.)

18 It is hereby stipulated by and between RMRF ENTERPRISES,
19 INC., and DANIEL JOSEPH SHAW (hereafter Respondents), represented
20 by Michael T. Parsons, Attorney at Law, and the Complainant,
21 acting by and through Deidre L. Johnson, Counsel for the
22 Department of Real Estate, as follows for the purpose of settling
23 and disposing the Accusation filed on January 22, 2004, in this
24 matter:

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

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

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

6 3. On February 17, 2004, Respondents filed their
7 Notice of Defense pursuant to Section 11505 of the Government
8 Code for the purpose of requesting a hearing on the allegations
9 in the Accusation. Respondents hereby freely and voluntarily
10 withdraw said Notice of Defense. Respondents acknowledge that
11 they understand that by withdrawing said Notice of Defense they
12 will each thereby waive their rights to require the Commissioner
13 to prove the allegations in the Accusation at a contested hearing
14 held in accordance with the provisions of the APA, and that they
15 will waive other rights afforded to them in connection with the
16 hearing 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. Respondents, pursuant to the limitations set forth
20 below, hereby admit that the factual allegations in Paragraphs I
21 through IV of the Accusation filed in this proceeding are true
22 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 the remaining paragraphs of the Accusation,
26 Respondents stipulate that they will not interpose a defense
27 thereto. This Stipulation is based on the factual allegations

1 effect, and Respondents shall retain the rights to a hearing and
2 proceeding on the Accusation under all the provisions of the APA
3 and shall not be bound by any admission or waiver made herein.

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

11 DETERMINATION OF ISSUES

12 By reason of the foregoing stipulations, admissions
13 and waivers, and for the purpose of settlement of the pending
14 Accusation as to Respondents without a hearing, it is stipulated
15 and agreed that the following determination of issues shall be
16 made:

17 I

18 The acts and/or omissions of Respondent RMRF
19 ENTERPRISES, INC., as stipulated above, constitute grounds for
20 disciplinary action against the real estate license and license
21 rights of Respondent under the provisions of Sections 10145(b),
22 10232.2, 10234(a), and 10234(c) of the California Business and
23 Professions Code (hereafter the Code), in conjunction with
24 Section 10177(d) of the Code.

25 II

26 The acts and/or omissions of Respondent DANIEL JOSEPH
27 SHAW, as stipulated above, constitute grounds for disciplinary

1 action against the real estate license and license rights of
2 Respondent under the provisions of Section 10177(h) of the Code.

3 ORDER

4 A. All real estate licenses and license rights of
5 Respondents RMRF ENTERPRISES, INC., and DANIEL JOSEPH SHAW shall
6 be suspended for a period of sixty (60) days from the effective
7 date of the Decision.

8 B. Said suspensions are stayed for a period of two
9 (2) years as to each Respondent upon the following terms and
10 conditions:

11 (1) Respondents shall obey all laws, rules and
12 regulations governing the rights, duties and
13 responsibilities of a real estate licensee in
14 the State of California;

15 (2) The Commissioner may, if a final subsequent
16 determination is made, after hearing or upon
17 stipulation, that cause for disciplinary
18 action against the licenses of Respondents,
19 or either of them, has occurred within two
20 (2) years from the effective date of the
21 Decision, vacate and set aside the stay order
22 and reimpose all or a portion of the stayed
23 suspension as to that Respondent. Should
24 no order vacating the stay be made pursuant
25 to this condition, the stay imposed herein as
26 to each Respondent shall become permanent;

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(3) Respondent DANIEL JOSEPH SHAW shall, prior to
the effective date of this Decision, submit
proof satisfactory to the Commissioner of
having taken and completed the continuing
education course on trust fund accounting
and handling specified in paragraph (3) of
subdivision (a) of Section 10170.5 of the
Business and Professions Code from an approved
continuing education course provider. Said
course may have been completed within one
hundred and twenty (120) days prior to the
effective date of the order herein. If
Respondent fails to satisfy this condition,
the Commissioner may order the suspension of
Respondent's license until the Respondent
presents such evidence. The Commissioner
shall afford Respondent the opportunity for
hearing pursuant to the Administrative
Procedure Act to present such evidence;

(4) Respondent DANIEL JOSEPH SHAW shall, within
six (6) months from the effective date of this
Decision, take and pass the Professional
Responsibility Examination administered by the
Department including the payment of the
appropriate examination fee. If Respondent
fails to satisfy this condition, the
Commissioner may order suspension of the

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restricted license until Respondent passes the examination.

(5) Pursuant to Section 10148 of the Business and Professions Code, Respondents RMRF ENTERPRISES, INC. and DANIEL JOSEPH SHAW, jointly and severally, shall pay the Commissioner's reasonable costs for audits as a result of the trust fund violations found herein, as follows:

(a) Audit #OK 02-0004/02-0026, report dated October 15, 2002, for not more than \$2,466.30;

(b) Future follow-up audit, for not more than \$2,800.00.

Both Respondents shall be jointly and severally liable for payment of the entire amounts of said costs. In calculating the amount of the Commissioner's reasonable costs, the Commissioner may use the estimated average hourly salary for all Department personnel 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. Respondents shall pay such costs within sixty (60) days of receiving an invoice from the Commissioner detailing the

1 activities performed during the audit and the
2 amount of time spent performing those
3 activities. The Commissioner may, in his
4 discretion, vacate and set aside the stay
5 order, if payment is not timely made as
6 provided for herein, or as provided for in a
7 subsequent agreement between Respondents and
8 the Commissioner. The vacation and the set
9 aside of the stay shall remain in effect
10 until payment is made in full, or until
11 Respondents enter into an agreement
12 satisfactory to the Commissioner to provide
13 for payment. Should no order vacating the
14 stay be issued, either in accordance with
15 this condition or condition B(2) herein, the
16 stay imposed herein shall become permanent.

17
18 May 14, 2004
19 DATED

Deidre L. Johnson
20 DEIDRE L. JOHNSON
21 Counsel for the Complainant

22 * * *

23 I have read the Stipulation and Agreement, have
24 discussed it with my counsel, and its terms are understood by me
25 and are agreeable and acceptable to me. I understand that I am
26 waiving rights given to me by the California Administrative
27 Procedure Act, and I willingly, intelligently and voluntarily
waive those rights, including the right of requiring the

1 Commissioner to prove the allegations in the Accusation at a
2 hearing at which I would have the right to cross-examine
3 witnesses against me and to present evidence in defense and
4 mitigation of the charges.

5
6 RMRF ENTERPRISES, INC.
Respondent

7
8 5/10/2004
DATED

By: *Daniel Joseph Shaw*
DANIEL JOSEPH SHAW

10
11 5/10/2004
DATED

Daniel Joseph Shaw
DANIEL JOSEPH SHAW
Respondent

12 APPROVED AS TO FORM:

14
15 5/10/04
DATED

Michael T. Parsons
MICHAEL T. PARSONS
Counsel for the Respondents

17 * * *

18
19 The foregoing Stipulation and Agreement is hereby
20 adopted as my Decision and shall become effective at 12 o'clock
21 noon on July 28, 2004.

22 IT IS SO ORDERED May 21, 2004.

24 JOHN R. LIBERATOR
Acting Real Estate Commissioner

26 *John R. Liberator*
27

**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
MAR - 8 2004

DEPARTMENT OF REAL ESTATE

By Kathleen Conners

In the Matter of the Accusation of

RMRF ENTERPRISES, INC., and
DANIEL JOSEPH SHAW,

Case No. H-8634 SF

OAH No. N-2004030040

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

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 BUILDING
1515 CLAY STREET, SUITE 206
OAKLAND, CA 94612**

on **MAY 18, 2004**, 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: MARCH 5, 2004

By

Deidre L. Johnson
DEIDRE L. JOHNSON, 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)

FILED
JAN 22 2004

DEPARTMENT OF REAL ESTATE

Laurie Q. Zini

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 RMRF ENTERPRISES INC.,) No. H-8634 SF
13 DANIEL JOSEPH SHAW,) ACCUSATION
14 Respondents.)

15 The Complainant, Les R. Bettencourt, a Deputy Real
16 Estate Commissioner of the State of California for cause of
17 accusation against RMRF ENTERPRISES INC. dba Cupertino Capital
18 (hereinafter "Respondent ENTERPRISES") and DANIEL JOSEPH SHAW
19 (hereinafter "Respondent SHAW"), is informed and alleges as
20 follows:

21 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.

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II

Respondents ENTERPRISES and SHAW are 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 follows:

RMRF ENTERPRISES INC. - as a real estate broker corporation.

DANIEL JOSEPH SHAW - as a real estate broker and as designated broker-officer for Respondent ENTERPRISES.

III

Whenever reference is made in an allegation in this Accusation to an act or omission of "Respondents", such allegation shall be deemed to mean the act or omission of each of the Respondents named in the caption hereof, acting individually, jointly, and severally.

IV

At all times herein mentioned, Respondents 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) and (e) 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, 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

///

1 serviced and payments thereon were collected on behalf of
2 others.

3 V

4 Beginning on or about September 9, 2002, the
5 Department conducted an audit of Respondents' mortgage loan
6 brokerage for the period January 1, 2002 to July 31, 2002 as set
7 forth in Audit Nos. OK 02-0004 and OK 02-0026 dated October 15,
8 2002. During the course of the mortgage loan brokerage
9 activities described in Paragraph IV, Respondents received and
10 disbursed funds held in trust on behalf of another or others.
11 During the audit period, Respondent ENTERPRISES was a threshold
12 broker, and also was a multi-lender broker that sold undivided
13 interests in secured loans to multiple third party investors per
14 loan.

15 VI

16 During the audit period, when selling secured notes
17 funded by Respondents or otherwise owned by Respondents,
18 Respondents failed to place trust funds received from investors
19 to purchase notes, or undivided interests in the notes, into a
20 neutral escrow depository pursuant to Section 10145(b) of the
21 Code.

22 VII

23 During the audit period, as to threshold status,
24 Respondents failed to file with the Department as required by
25 Section 10232.2 of the Code the Mortgage Loan/Trust Deed Annual
26 Report which was due on March 31, 2001 until September 9, 2002.

27 ///

1 VIII

2 During the audit period, as to sales of existing
3 notes, Respondents funded loans as the lender and became the
4 named beneficiary on the notes and deeds of trust securing
5 loans. Upon resale to the public of the secured notes, or of
6 undivided interests in such notes, Respondents failed to timely
7 record or cause to be recorded assignments of deeds of trust in
8 the names of the investors within 10 working days after
9 Respondents received each investor's funds or after close of
10 escrow, as required by Section 10234(c) of the Code in
11 connection with the following loans:

<u>LOAN NO.</u>	<u>NOTE PURCHASER</u>	<u>DATE ASSIGNMENT RECORDED</u>
13 848	Mark Reynolds	06/07/02
14 840	John Pereira	05/30/02

15 IX

16 During the audit period, Respondents failed to record
17 deeds of trust in the name of lenders as beneficiaries as
18 required by Section 10234(a) of the Code in connection with the
19 following loans:

<u>LOAN NO.</u>	<u>BORROWER</u>	<u>LOAN AMOUNT</u>
21 839	David Ryan	\$500,000.00
22 844	Mehdi Siadat	\$525,000.00
23 847	Hannibal Salomon	\$200,000.00

24 X

25 The facts alleged above, are grounds for the
26 suspension or revocation of Respondents' licenses and/or license
27 rights under the following sections of the Code:

1 (1) As to Paragraph VI, under Section 10177(d) of the
2 Code in conjunction with Section 10145(b) of the Code;

3 (2) As to Paragraph VII, under Section 10177(d) of
4 the Code in conjunction with Section 10232.2 of the Code;

5 (3) As to Paragraph VIII, under Section 10177(d) of
6 the Code in conjunction with Section 10234(c) of the Code; and

7 (4) As to Paragraph IX, under Section 10177(d) of the
8 Code in conjunction with Section 10234(a) of the Code.

9 In the alternative, the acts and/or omissions of
10 Respondent SHAW described above, constitute failure on the part
11 of Respondent SHAW, as designated broker-officer for Respondent
12 ENTERPRISES, to exercise reasonable supervision and control over
13 the licensed activities of Respondent ENTERPRISES required by
14 Section 10159.2 of the Code, and is cause for the suspension or
15 revocation of Respondent SHAW's license and or license rights
16 under Section 10177(h) of the Code.

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

24 
25 LES R. BETTENCOURT
26 Deputy Real Estate Commissioner

26 Dated at Oakland, California,
27 this 13th day of January, 2004.