

1 Department of Real Estate
2 P.O. Box 187007
3 Sacramento, CA 95818-7007
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6
7

FILED
JAN 27 2006

DEPARTMENT OF REAL ESTATE

By Anne Shaver

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-9305 SF

12 LOAN EXPRESS INC., and MARY LOU)
13 PEREZ,)

STIPULATION AND
AGREEMENT

14 Respondent.)

15 It is hereby stipulated by and between LOAN EXPRESS
16 INC., and MARY LOU PEREZ (hereafter "Respondents") and their
17 attorney, Maxine Monaghan, and the Complainant, acting by and
18 through Truly Sughrue, Counsel for the Department of Real
19 Estate, as follows for the purpose of settling and disposing
20 the Accusation filed on July 5, 2005 in this matter:

21 1. All issues which were to be contested and all
22 evidence which was to be presented by Complainant and Respondents
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), shall instead and in place thereof be
26 submitted solely on the basis of the provisions of this
27

1 Stipulation and Agreement.

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

5 3. On August 9, 2005, Respondents filed a 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. Respondents hereby freely and voluntarily withdraw
9 said Notice of Defense. Respondents acknowledge that they
10 understand that by withdrawing said Notice of Defense they will
11 thereby waive their rights to require the Commissioner to prove
12 the allegations in the Accusation at a contested hearing held in
13 accordance with the provisions of the APA, and that they will
14 waive other rights afforded to them in connection with the
15 hearing such as the right to present evidence in defense of the
16 allegations in the Accusation and the right to cross-examine
17 witnesses.
18

19 4. This stipulation is based on the factual
20 allegations contained in the Accusation. In the interest of
21 expediency and economy, Respondents choose not to contest these
22 factual allegations, but to remain silent and understands that,
23 as a result thereof, these factual statements will serve as a
24 prima facie basis for the "Determination of Issues" and "Order"
25 set forth below. The Real Estate Commissioner shall not be
26 required to provide further evidence to prove such allegations.

27 5. This Stipulation and Respondents decision not to

1 contest the Accusation are made for the purpose of reaching an
2 agreed disposition of this proceeding and are expressly limited
3 to this proceeding and any other proceeding or case in which the
4 Department of Real Estate (herein "the Department"), the state or
5 federal government, an agency of this state, or an agency of
6 another state is involved.

7 6. Respondents understand that by agreeing to this
8 Stipulation and Agreement, Respondents agree to pay, pursuant to
9 Section 10148 of the California Business and Professions Code,
10 the cost of the audit which resulted in the determination that
11 Respondent committed the trust fund violation(s) found in
12 Paragraph I, below, of the Determination of Issues. The amount
13 of said costs is \$4,327.70.

14 7. Respondents further understands that by agreeing
15 to this Stipulation and Agreement in Settlement, the findings
16 set forth below in the Determination Of Issues become final, and
17 that the Commissioner may charge said Respondents for the
18 costs of any audit conducted pursuant to Section 10148 of
19 the California Business and Professions Code to determine if
20 the violations have been corrected. The maximum costs of
21 said audit shall not exceed \$4,327.70.

22 8. It is understood by the parties that the Real
23 Estate Commissioner may adopt the Stipulation and Agreement as
24 his decision in this matter thereby imposing the penalty and
25 sanctions on the real estate licenses and license rights of
26 Respondent as set forth in the below "Order". In the event that
27

1 the Commissioner in his discretion does not adopt the Stipulation
2 and Agreement, it shall be void and of no effect, and Respondents
3 shall retain the right to a hearing and proceeding on the
4 Accusation under all the provisions of the APA and shall not be
5 bound by any admission or waiver made herein.

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

13 * * *

14 DETERMINATION OF ISSUES

15 By reason of the foregoing stipulations and waivers and
16 solely for the purpose of settlement of the pending Accusation
17 without a hearing, it is stipulated and agreed that the following
18 determination of issues shall be made:
19

20 I

21 The acts and omissions of Respondents as described in
22 the Accusation are grounds for the suspension or revocation of
23 Respondents licenses and license rights under the following
24 sections of the Code and Regulations:

25 (a) As to Paragraph VIII under Section 10137 of the
26 Code in conjunction with Section 10177(d) of the Code;

27 (b) As to Paragraph IX under Section 10240 of the

Code;

1 (c) As to Paragraph X under Section 2831 of the
2 Regulations in conjunction with Section 10177(d) of the Code;

3 (d) As to Paragraph XI under Section 2731 of the
4 Regulations in conjunction with Section 10177(d) of the Code;

5
6 II

7 The acts and/or omissions of Respondent MARY LOU PEREZ
8 described in the Accusation, constitute failure on the part of
9 MARY LOU PEREZ, as designated broker-officer for LOAN EXPRESS
10 INC., to exercise reasonable supervision and control over the
11 licensed activities of LEI required by Section 10159.2 of the
12 Code, and is cause for the suspension or revocation of MARY LOU
13 PEREZ'S license and/or license rights under Section 10177(h) of
14 the Code.

15 * * *

16 ORDER

17 I

18 All licenses and licensing rights of Respondent LOAN EXPRESS
19 INC. (hereinafter "LEI") under the Real Estate Law are suspended
20 for a period of sixty (60) days from the effective date of this
21 Order; provided, however, that:

22 1) Thirty (30) days of said suspension shall be stayed, upon the
23 condition that LEI petition pursuant to Section 10175.2 of the
24 Business and Professions Code and pays a monetary penalty
25 pursuant to Section 10175.2 of the Business and Professions
26
27

1 Code at a rate of \$100 for each day of the suspension for a
2 total monetary penalty of \$3,000.

3 a) Said payment shall be in the form of a cashier's check or
4 certified check made payable to the Recovery Account of the
5 Real Estate Fund. Said check must be delivered to the
6 Department prior to the effective date of the Order in this
7 matter.

8 b) No further cause for disciplinary action against the Real
9 Estate licenses of LEI occurs within two (2) years from the
10 effective date of the decision in this matter.

11 c) If LEI fails to pay the monetary penalty as provided above
12 prior to the effective date of this Order, the stay of the
13 suspension shall be vacated as to that Respondent and the
14 order of suspension shall be immediately executed, under
15 this Paragraph 1 of this Order, in which event the said
16 Respondent shall not be entitled to any repayment nor
17 credit, prorated or otherwise, for the money paid to the
18 Department under the terms of this Order.

19 d) If said Respondent pays the monetary penalty and any other
20 moneys due under this Stipulation and Agreement and if no
21 further cause for disciplinary action against the real
22 estate license of said Respondent occurs within two (2)
23 years from the effective date of this Order, the entire stay
24 hereby granted under Paragraph 1 of this Order, as to said
25 Respondent only, shall become permanent.

26 2) The remaining thirty (30) days of said suspension shall be
27 stayed for two (2) years upon the following terms and

1 conditions:

2 a) LEI shall obey all laws, rules and regulations governing the
3 rights, duties and responsibilities of a real estate
4 licensee in the State of California; and,

5 b) That no final subsequent determination be made, after
6 hearing or upon stipulation, that cause for disciplinary
7 action occurred within two (2) years from the effective date
8 of this Order. Should such a determination be made, the
9 Commissioner may, in his discretion, vacate and set aside
10 the stay order and reimpose all or a portion of the stayed
11 suspension. Should no such determination be made, the stay
12 imposed herein shall become permanent.

13 3) Pursuant to Section 10148 of the Business and Professions
14 Code, LEI shall jointly and severally with MARY LOU PEREZ pay
15 the sum of \$4,327.70 for the Commissioner's cost of the audit
16 which led to this disciplinary action. Respondents shall pay
17 such cost within forty-five (45) days of receiving an invoice
18 therefor from the Commissioner. The Commissioner may suspend
19 the LEI's license pending a hearing held in accordance with
20 Section 11500, et seq., of the Government Code, if payment is
21 not timely made as provided for herein, or as provided for in
22 a subsequent agreement between the Respondent and the
23 Commissioner. The suspension shall remain in effect until
24 payment is made in full or until Respondent enters into an
25 agreement satisfactory to the Commissioner to provide for
26 payment, or until a decision providing otherwise is adopted
27 following a hearing held pursuant to this condition.

1 4) Pursuant to Section 10148 of the Business and Professions
2 Code, LEI shall jointly and severally with MARY LOU PEREZ pay
3 the Commissioner's reasonable cost, not to exceed \$4,327.70,
4 for an audit to determine if Respondents have corrected the
5 trust fund violation(s) found in Paragraph I of the
6 Determination of Issues. In calculating the amount of the
7 Commissioner's reasonable cost, the Commissioner may use the
8 estimated average hourly salary for all persons performing
9 audits of real estate brokers, and shall include an allocation
10 for travel time to and from the auditor's place of work.
11 Respondent shall pay such cost within forty-five (45) days of
12 receiving an invoice therefor from the Commissioner detailing
13 the activities performed during the audit and the amount of
14 time spent performing those activities. The Commissioner may
15 suspend LEI's license pending a hearing held in accordance
16 with Section 11500, et seq., of the Government Code, if
17 payment is not timely made as provided for herein, or as
18 provided for in a subsequent agreement between Respondent and
19 the Commissioner. The suspension shall remain in effect until
20 payment is made in full or until Respondent enters into an
21 agreement satisfactory to the Commissioner to provide for
22 payment, or until a decision providing otherwise is adopted
23 following a hearing held pursuant to this condition.

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II

1 All licenses and licensing rights of Respondent MARY LOU
2 PEREZ (hereinafter "PEREZ") under the Real Estate Law are
3 suspended for a period of sixty (60) days from the effective date
4 of this Order; provided, however, that:

5 1) Thirty (30) days of said suspension shall be stayed, upon the
6 condition that PEREZ petition pursuant to Section 10175.2 of
7 the Business and Professions Code and pays a monetary penalty
8 pursuant to Section 10175.2 of the Business and Professions
9 Code at a rate of \$100 for each day of the suspension for a
10 total monetary penalty of \$3,000.

11 a) Said payment shall be in the form of a cashier's check or
12 certified check made payable to the Recovery Account of the
13 Real Estate Fund. Said check must be delivered to the
14 Department prior to the effective date of the Order in this
15 matter.

16 b) No further cause for disciplinary action against the Real
17 Estate licenses of said Respondent occurs within two (2)
18 years from the effective date of the decision in this
19 matter.

20 c) If PEREZ fails to pay the monetary penalty as provided above
21 prior to the effective date of this Order, the stay of the
22 suspension shall be vacated as to that Respondent and the
23 order of suspension shall be immediately executed, under
24 this Paragraph 1 of this Order, in which event the said
25 Respondent shall not be entitled to any repayment nor
26
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1 credit, prorated or otherwise, for the money paid to the
2 Department under the terms of this Order.

3 d) If PEREZ pays the monetary penalty and any other moneys due
4 under this Stipulation and Agreement and if no further cause
5 for disciplinary action against the real estate license of
6 said Respondent occurs within two (2) years from the
7 effective date of this Order, the entire stay hereby granted
8 under Paragraph 1 of this Order, as to said Respondent only,
9 shall become permanent.

10 2) The remaining thirty (30) days of said suspension shall be
11 stayed for two (2) years upon the following terms and
12 conditions:

13 a) PEREZ shall obey all laws, rules and regulations governing
14 the rights, duties and responsibilities of a real estate
15 licensee in the State of California; and,

16 b) That no final subsequent determination be made, after
17 hearing or upon stipulation, that cause for disciplinary
18 action occurred within two (2) years from the effective date
19 of this Order. Should such a determination be made, the
20 Commissioner may, in his discretion, vacate and set aside
21 the stay order and reimpose all or a portion of the stayed
22 suspension. Should no such determination be made, the stay
23 imposed herein shall become permanent.

24 3) PEREZ shall, within six (6) months from the effective date of
25 this Decision, take and pass the Professional Responsibility
26 Examination administered by the Department including the
27 payment of the appropriate examination fee. If PEREZ fails to

1 satisfy this condition, the Commissioner may order suspension
2 of the license until Respondent passes the examination.

3 4) PEREZ shall, prior to the effective date of this Decision,
4 submit proof satisfactory to the Commissioner of having taken
5 and successfully completed the continuing education course on
6 trust fund accounting and handling specified in subdivision
7 (a) of Section 10170.5 of the Business and Professions Code.
8 Proof of satisfaction of this requirement includes evidence
9 that PEREZ has successfully completed the trust fund account
10 and handling continuing education course within 120 days prior
11 to the effective date of the Decision in this matter. If PEREZ
12 fails to satisfy this condition, the Commissioner may order
13 the suspension of PEREZ's license until PEREZ presents proof
14 that she has successfully completed the trust fund course.

15 5) Pursuant to Section 10148 of the Business and Professions
16 Code, PEREZ shall jointly and severally with LEI pay the sum
17 of \$4,327.70 for the Commissioner's cost of the audit which
18 led to this disciplinary action. Respondents shall pay such
19 cost within forty-five (45) days of receiving an invoice
20 therefor from the Commissioner. The Commissioner may suspend
21 PEREZ's license pending a hearing held in accordance with
22 Section 11500, et seq., of the Government Code, if payment is
23 not timely made as provided for herein, or as provided for in
24 a subsequent agreement between the Respondent and the
25 Commissioner. The suspension shall remain in effect until
26 payment is made in full or until Respondent enters into an
27 agreement satisfactory to the Commissioner to provide for

1 payment, or until a decision providing otherwise is adopted
2 following a hearing held pursuant to this condition.

3 6) Pursuant to Section 10148 of the Business and Professions

4 Code, PEREZ shall jointly and severally with LEI pay the
5 Commissioner's reasonable cost, not to exceed \$4,327.70, for
6 an audit to determine if Respondents have corrected the trust
7 fund violation(s) found in Paragraph I of the Determination of
8 Issues. In calculating the amount of the Commissioner's
9 reasonable cost, the Commissioner may use the estimated
10 average hourly salary for all persons performing audits of
11 real estate brokers, and shall include an allocation for
12 travel time to and from the auditor's place of work.

13 Respondent shall pay such cost within forty-five (45) days of
14 receiving an invoice therefor from the Commissioner detailing
15 the activities performed during the audit and the amount of
16 time spent performing those activities. The Commissioner may
17 suspend PEREZ's license pending a hearing held in accordance
18 with Section 11500, et seq., of the Government Code, if
19 payment is not timely made as provided for herein, or as
20 provided for in a subsequent agreement between Respondent and
21 the Commissioner. The suspension shall remain in effect until
22 payment is made in full or until Respondent enters into an
23 agreement satisfactory to the Commissioner to provide for
24 payment, or until a decision providing otherwise is adopted
25 following a hearing held pursuant to this condition.

1
2 5-Jan-06

DATED

Truly S
TRULY SUGHRUE
Counsel for Complainant

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4 * * *

5 I have read the Stipulation and Agreement, discussed it
6 with my counsel, and its terms are understood by me and are
7 agreeable and acceptable to me. I understand that I am waiving
8 rights given to me by the California Administrative Procedure
9 Act, and I willingly, intelligently and voluntarily waive those
10 rights, including the right of requiring the Commissioner to
11 prove the allegations in the Accusation at a hearing at which I
12 would have the right to cross-examine witnesses against me and to
13 present evidence in defense and mitigation of the charges.

14
15 1/4/05
DATED

Mary Lou Perez
LOAN EXPRESS INC.
Respondent

16
17
18 1/4/05
DATED

Mary Lou Perez
MARY LOU PEREZ
Respondent

19
20 I have reviewed the Stipulation and Agreement as to
21 form and content and have advised my client accordingly.

22
23 1/4/05
DATED

Maxine Monaghan
MAXINE MONAGHAN
Attorney for Respondents

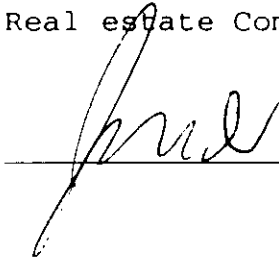
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The foregoing Stipulation and Agreement is hereby
adopted as my Decision and shall become effective at 12 o'clock
noon on February 16, 2006

IT IS SO ORDERED 1-20-06

JEFF DAVI
Real estate Commissioner



1 TRULY SUGHRUE, Counsel
2 State Bar No. 223266
3 Department of Real Estate
4 P.O. Box 187007
5 Sacramento, CA 95818-7007
6
7 Telephone: (916) 227-0781

FILED
JUL 05 2005

DEPARTMENT OF REAL ESTATE

By *Rene Shaw*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 LOAN EXPRESS INC., and MARY) No. H- 9305 SF
13 LOU PEREZ,) ACCUSATION
14 Respondents.)

15 The Complainant, E. J. HABERER II, a Deputy Real Estate
16 Commissioner of the State of California, for cause of Accusation
17 against LOAN EXPRESS INC., and MARY LOU PEREZ (hereinafter
18 "Respondents"), are informed and alleges as follows:

19 I

20 The Complainant, E. J. HABERER II, a Deputy Real Estate
21 Commissioner of the State of California, makes this Accusation in
22 his official capacity.

23 II

24 Respondents are presently licensed and/or has license
25 rights under the Real Estate Law, Part 1 of Division 4 of the
26 Business and Professions Code (hereinafter "Code").
27

III

1 At all times herein mentioned, LOAN EXPRESS INC.,
2
3 (hereinafter "LEI") was and is licensed by the State of
4 California Department of Real Estate (hereinafter "Department")
5 as a real estate broker corporation.

6 IV

7 At all times herein mentioned, Respondent MARY LOU
8 PEREZ, (hereinafter "PEREZ") was and is licensed by the
9 Department individually and as the designated broker officer of
10 LEI. As said designated officer-broker, PEREZ was and now is
11 responsible pursuant to Section 10159.2 of the Code for the
12 supervision of the activities of the officers, agents, real
13 estate licensees and employees of LEI for which a license is
14 required.

15 V

16 At all times herein mentioned, Respondents engaged in
17 the business of, acted in the capacity of, advertised or assumed
18 to act as a real estate broker in the State of California within
19 the meaning of:

20 (a) Section 10131(a) of the Code, including the
21 operation and conduct of a real estate resale brokerage with the
22 public wherein, on behalf of others, for compensation or in
23 expectation of compensation, Respondents sold and offered to
24 sell, bought and offered to buy, solicited prospective sellers
25 and purchasers of, solicited and obtained listings of, and
26 negotiated the purchase and resale of real property; and
27

1 (b) Section 10131(d) of the Code, including the operation
2 and conduct of a mortgage loan brokerage business with the public
3 wherein Respondents solicited lenders and borrowers for loans
4 secured directly or collaterally by liens on real property or a
5 business opportunity, and wherein such loans were arranged,
6 negotiated, processed, and consummated by Respondent on behalf of
7 others for compensation or in expectation of a compensation.

8 VI

9 At all times mentioned herein beginning on or about
10 April 2003, LEI and PEREZ employed and compensated Brant John
11 Goble, an unlicensed individual, to perform the acts and conduct
12 the activities described in Paragraph V, above, including but not
13 limited to the activities described in Paragraph VII, below.

14 VII

15 Beginning on or about April 2003 and continuing
16 thereafter, in the course of the activities and employment
17 described in Paragraphs V(b) and VI, above, Brant John Goble,
18 acting for and on behalf of another or others, for or in
19 expectation of compensation, solicited loans secured directly or
20 collaterally by liens on real property, including but not limited
21 to the real property located at 565 Coe Avenue, San Jose,
22 California, and 3369 Kirkwood Drive, San Jose, California.

23 VIII

24 In acting as described above, LEI and PEREZ violated
25 Section 10137 of the Code.

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IX

1
2 In connection with the mortgage loan brokerage
3 business described in Paragraph V(b), LEI violated and/or
4 willfully failed to comply with Section 10240 of the Code, in
5 that Respondent:

6 (a) failed to cause to be delivered to the borrowers
7 the written Disclosure Statement required by Section 10241 of
8 the Code;

9 (b) failed to obtain the signature of the borrowers
10 on any Written Disclosure Statement; and/or

11 (c) failed to retain on file for a period of three
12 years a true and correct copy of any Written Disclosure
13 Statement signed by the borrowers.

14 X

15 In connection with LEI's activities described in
16 Paragraph V(a), LEI accepted or received funds in trust
17 (hereinafter "trust funds"). LEI failed to maintain a record of
18 all trust funds received and not deposited in a trust account, as
19 required by Section 2831 of Title 10, California Code of
20 Regulations (hereinafter "Regulations").

21 XI

22 LEI operated their real estate business in San Jose,
23 California, under the fictitious business names of "EFS Realty"
24 and "Funding Express Inc.", without LEI obtaining a license
25 bearing said fictitious business name as required by Section 2731
26 of the Regulations.
27

XII

1 At all times mentioned herein, PEREZ failed to exercise
2 reasonable supervision over the acts of LEI and its agents and
3 employees in such a manner as to allow the acts and omissions on
4 the part of LEI, described above, to occur.
5

XIII

6 The facts alleged above are grounds for the suspension
7 or revocation of the licenses and license rights of Respondents
8 under the following provisions of the Code:
9

10 (a) As to Paragraph VIII under Section 10137 of the
11 Code in conjunction with Section 10177(d) of the Code;

12 (b) As to Paragraph IX under Section 10240 of the
13 Code;

14 (c) As to Paragraph X under Section 2831 of the
15 Regulations in conjunction with Section 10177(d) of the Code;

16 (d) As to Paragraph XI under Section 2731 of the
17 Regulations in conjunction with Section 10177(d) of the Code;

XIV

18 The acts and/or omissions of PEREZ described in
19 paragraph XII, constitutes failure on the part of PEREZ, as
20 designated broker-officer for LEI, to exercise reasonable
21 supervision and control over the licensed activities of LEI
22 required by Section 10159.2 of the Code.
23

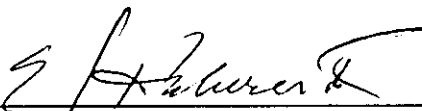
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondents
5 under the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

8
9 
10 E. J. HABERER II
11 Deputy Real Estate Commissioner

12 Dated at Oakland, California,
13 this 29 day of June, 2005
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