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FILED  
MAR - 7 2006

1 Department of Real Estate  
2 P.O. Box 187007  
3 Sacramento, CA 95818-7007  
4 Telephone: (916) 227-0781

DEPARTMENT OF REAL ESTATE  
By Gene Skawpa

7 BEFORE THE DEPARTMENT OF REAL ESTATE  
8 STATE OF CALIFORNIA

9 \* \* \*

10	In the Matter of the Accusation of )	No. H-9362 SF
11	MARIN CAPITAL CORPORATION, and )	<u>STIPULATION AND</u>
12	DAVID JOSEPH NESERALLA, )	<u>AGREEMENT</u>
13	Respondents. )	

14  
15 It is hereby stipulated by and between MARIN CAPITAL  
16 CORPORATION, and DAVID JOSEPH NESERALLA (hereafter  
17 "Respondents") and their attorney, Daniel Nassie, and the  
18 Complainant, acting by and through Truly Sughrue, Counsel for  
19 the Department of Real Estate, as follows for the purpose of  
20 settling and disposing the Accusation filed on September 16,  
21 2005 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  
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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 September 26, 2005, Respondents filed a Notice  
7 of Defense pursuant to Section 11505 of the Government Code for  
8 the purpose of requesting a hearing on the allegations in the  
9 Accusation. Respondents hereby freely and voluntarily withdraw  
10 said Notice of Defense. Respondents acknowledges that they  
11 understand that by withdrawing said Notice of Defense they will  
12 thereby waive their rights to require the Commissioner to prove  
13 the allegations in the Accusation at a contested hearing held in  
14 accordance with the provisions of the APA, and that they will  
15 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  
20 4. This stipulation is based on the factual  
21 allegations contained in the Accusation. In the interest of  
22 expediency and economy, Respondents choose not to contest these  
23 factual allegations, but to remain silent and understand that, as  
24 a result thereof, these factual statements will serve as a prima  
25 facie basis for the "Determination of Issues" and "Order" set  
26 forth below. The Real Estate Commissioner shall not be required  
27 to provide further evidence to prove such allegations.

1           5.     This Stipulation and Respondents' decision not to  
2 contest the Accusation are made for the purpose of reaching an  
3 agreed disposition of this proceeding and are expressly limited  
4 to this proceeding and any other proceeding or case in which the  
5 Department of Real Estate (herein "the Department"), the state or  
6 federal government, an agency of this state, or an agency of  
7 another state is involved.

8           6.     Respondents understand that by agreeing to this  
9 Stipulation and Agreement, Respondents agrees to pay, pursuant  
10 to Section 10148 of the California Business and Professions  
11 Code, the cost of the audit which resulted in the determination  
12 that Respondent committed the trust fund violation(s) found in  
13 Paragraph I, below, of the Determination of Issues. The amount  
14 of said costs is \$7,781.52.

15           7.     Respondents further understand that by agreeing  
16 to this Stipulation and Agreement in Settlement, the findings  
17 set forth below in the Determination Of Issues become final, and  
18 that the Commissioner may charge said Respondents for the costs  
19 of any audit conducted pursuant to Section 10148 of the  
20 California Business and Professions Code to determine if the  
21 violations have been corrected. The maximum costs of said audit  
22 shall not exceed \$7,781.52.

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

1 Respondent as set forth in the below "Order". In the event that  
2 the Commissioner in his discretion does not adopt the Stipulation  
3 and Agreement, it shall be void and of no effect, and Respondent  
4 shall retain the right to a hearing and proceeding on the  
5 Accusation under all the provisions of the APA and shall not be  
6 bound by any admission or waiver made herein.

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

14 \* \* \*

15 DETERMINATION OF ISSUES

16 By reason of the foregoing stipulations and waivers and  
17 solely for the purpose of settlement of the pending Accusation  
18 without a hearing, it is stipulated and agreed that the following  
19 determination of issues shall be made:  
20

21 I

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

26 (1) As to Paragraph IX, under Section 10145 of the  
27 Code in conjunction with Section 2832 of the Regulations;

1 (2) As to Paragraph X(a), under Section 10232.2(c) in  
2 conjunction with Section 10177(d) of the Code;

3 (3) As to Paragraph X(b), under Section 10232.4(a) in  
4 conjunction with Section 10177(d) of the Code;

5 (4) As to Paragraph XI, under Section 10229(a) (2003)  
6 in conjunction with Section 10177(d) of the Code;

7 (5) As to Paragraph XII, under Section 10177(d) of the  
8 Code in conjunction with Section 2715 of the Regulations;

9 II

10 The acts and/or omissions of Respondent DAVID JOSEPH  
11 NESERALLA (hereafter "NESERALLA") described in the Accusation,  
12 constitute failure on the part of NESERALLA, as designated  
13 broker-officer for MARIN CAPITAL CORPORATION (hereafter "MCC"),  
14 to exercise reasonable supervision and control over the licensed  
15 activities of MCC required by Section 10159.2 of the Code, and  
16 is cause for the suspension or revocation of NESERALLA's license  
17 and/or license rights under Section 10177(h) of the Code.

18 \* \* \*

19 ORDER

20 I

21 All licenses and licensing rights of MCC under the Real  
22 Estate Law are suspended for a period of thirty (30) days from  
23 the effective date of this Order; provided, however, that:

24 1) Thirty (30) days of said suspension shall be stayed for two

25 (2) years upon the following terms and conditions:

26 a) Respondent shall obey all laws, rules and regulations  
27

1 governing the rights, duties and responsibilities of a real  
2 estate licensee in the State of California; and,

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

11 2) Pursuant to Section 10148 of the Business and Professions

12 Code, MCC shall jointly and severally with NESERALLA pay the  
13 sum of \$7,781.52 for the Commissioner's cost of the audit,  
14 which to this disciplinary proceeding. Respondents shall pay  
15 such cost within forty-five (45) days of receiving an invoice  
16 therefor from the Commissioner. The Commissioner may suspend  
17 the MCC's license pending a hearing held in accordance with  
18 Section 11500, et seq., of the Government Code, if payment is  
19 not timely made as provided for herein, or as provided for in  
20 a subsequent agreement between the Respondent and the  
21 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.

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

27 Code, MCC shall jointly and severally with NESERALLA pay the

1 Commissioner's reasonable cost, not to exceed \$7,781.52, for  
2 an audit to determine if Respondents have corrected the trust  
3 fund violation(s) found in Paragraph I of the Determination of  
4 Issues. In calculating the amount of the Commissioner's  
5 reasonable cost, the Commissioner may use the estimated  
6 average hourly salary for all persons performing audits of  
7 real estate brokers, and shall include an allocation for  
8 travel time to and from the auditor's place of work.

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

22 I

23 All licenses and licensing rights of NESERALLA under the  
24 Real Estate Law are suspended for a period of thirty (30) days  
25 from the effective date of this Order; provided, however, that:

26 1) Thirty (30) days of said suspension shall be stayed for two

27 (2) years upon the following terms and conditions:

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

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

12 2) Respondent shall, prior to the effective date of this  
13 Decision, submit proof satisfactory to the Commissioner of  
14 having taken and successfully completed the continuing  
15 education course on trust fund accounting and handling  
16 specified in subdivision (a) of Section 10170.5 of the  
17 Business and Professions Code. Proof of satisfaction of this  
18 requirement includes evidence that Respondent has successfully  
19 completed the trust fund account and handling continuing  
20 education course within 120 days prior to the effective date  
21 of the Decision in this matter. If Respondent fails to satisfy  
22 this condition, the Commissioner may order the suspension of  
23 Respondent's license until Respondent presents proof that he  
24 has successfully completed the trust fund course.

25 3) Pursuant to Section 10148 of the Business and Professions  
26 Code, NESERALLA shall jointly and severally with MCC pay the  
27 sum of \$7,781.52 for the Commissioner's cost of the audit,




1 which to this disciplinary proceeding. Respondents shall pay  
2 such cost within forty-five (45) days of receiving an invoice  
3 therefor from the Commissioner. The Commissioner may suspend  
4 the NESERALLA's license pending a hearing held in accordance  
5 with Section 11500, et seq., of the Government Code, if  
6 payment is not timely made as provided for herein, or as  
7 provided for in a subsequent agreement between the Respondent  
8 and the Commissioner. The suspension shall remain in effect  
9 until payment is made in full or until Respondent enters into  
10 an agreement satisfactory to the Commissioner to provide for  
11 payment, or until a decision providing otherwise is adopted  
12 following a hearing held pursuant to this condition.

13 4) Pursuant to Section 10148 of the Business and Professions  
14 Code, NESERALLA shall jointly and severally with MCC pay the  
15 Commissioner's reasonable cost, not to exceed \$7,781.52, for  
16 an audit to determine if Respondents have corrected the trust  
17 fund violation(s) found in Paragraph I of the Determination of  
18 Issues. In calculating the amount of the Commissioner's  
19 reasonable cost, the Commissioner may use the estimated  
20 average hourly salary for all persons performing audits of  
21 real estate brokers, and shall include an allocation for  
22 travel time to and from the auditor's place of work.  
23 Respondent shall pay such cost within forty-five (45) days of  
24 receiving an invoice therefor from the Commissioner detailing  
25 the activities performed during the audit and the amount of  
26 time spent performing those activities. The Commissioner may  
27 suspend NESERALLA's license pending a hearing held in

1 accordance with Section 11500, et seq., of the Government  
2 Code, if payment is not timely made as provided for herein, or  
3 as provided for in a subsequent agreement between Respondent  
4 and the Commissioner. The suspension shall remain in effect  
5 until payment is made in full or until Respondent enters into  
6 an agreement satisfactory to the Commissioner to provide for  
7 payment, or until a decision providing otherwise is adopted  
8 following a hearing held pursuant to this condition.  
9

10 17-Feb-06

11 DATED

10   
11 TRULY SUGHRUE

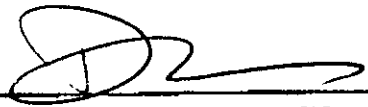
11 Counsel for Complainant

12  
13 \* \* \*

14 I have read the Stipulation and Agreement, discussed it  
15 with my counsel, and its terms are understood by me and are  
16 agreeable and acceptable to me. I understand that I am waiving  
17 rights given to me by the California Administrative Procedure  
18 Act, and I willingly, intelligently and voluntarily waive those  
19 rights, including the right of requiring the Commissioner to  
20 prove the allegations in the Accusation at a hearing at which I  
21 would have the right to cross-examine witnesses against me and to  
22 present evidence in defense and mitigation of the charges.  
23

24 2/1/06

25 DATED

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25 MARIN CAPITAL CORPORATION  
25 Respondent

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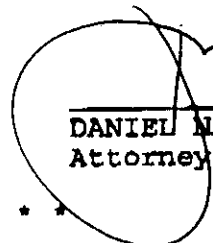


DAVID JOSEPH NESERALLA  
Respondent

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

2/9/06

DATED



DANIEL NASSIE  
Attorney for Respondents

\* \* \*

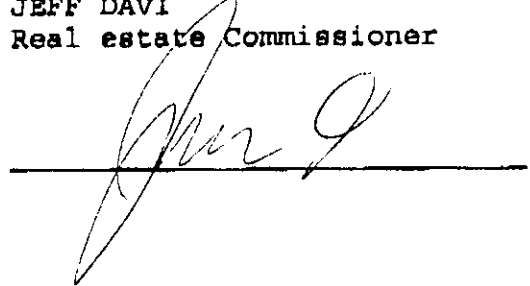
The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and shall become effective at 12 o'clock  
noon on March 27, 2006.

IT IS SO ORDERED

2/28/06

2006.

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  
SEP 16 2005

DEPARTMENT OF REAL ESTATE

By Jean Drum

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of ) No. H- 9362 SF  
12 MARIN CAPITAL CORPORATION, AND ) ACCUSATION  
13 DAVID JOSEPH NESERALLA, )  
14 Respondent. )

15  
16 The Complainant, E. J. HABERER II, a Deputy Real Estate  
17 Commissioner of the State of California, for cause of Accusation  
18 against MARIN CAPITAL CORPORATION and DAVID JOSEPH NESERALLA  
19 (hereinafter Respondents), is informed and alleges as follows:

20 I

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

24 II

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

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III

At all times herein mentioned, MARIN CAPITAL CORPORATION (hereinafter MCC) was and now is licensed by the Department of Real Estate of the State of California (hereinafter the Department) as a corporate real estate broker by and through DAVID JOSEPH NESERALLA as designated officer-broker of MCC to qualify said corporation and to act for said corporation as a real estate broker.

IV

At all times herein mentioned, DAVID JOSEPH NESERALLA (hereinafter NESERALLA) was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of MCC. As said designated officer-broker, NESERALLA was at all times mentioned herein responsible pursuant to Section 10159.2 of the Code for the supervision of the activities of the officers, agents, real estate licensees and employees of MCC for which a license is required.

V

Whenever reference is made in an allegation in this Accusation to an act or omission of MCC, such allegation shall be deemed to mean that the officers, directors, employees, agents and/or real estate licensees employed by or associated with MCC committed such act or omission while engaged in the furtherance of the business or operations of such corporate Respondent and while acting within the course and scope of their authority and employment.

\\

VI

1  
2 At all times herein mentioned, Respondents engaged in  
3 the business of, acted in the capacity of, advertised, or  
4 assumed to act as real estate brokers within the State of  
5 California within the meaning of Sections 10131(d) and 10131(e)  
6 of the Code, including the operation and conduct of a mortgage  
7 loan brokerage with the public wherein, on behalf of others, for  
8 compensation or in expectation of compensation, Respondents  
9 solicited lenders and borrowers for loans secured directly or  
10 collaterally by liens on real property, wherein Respondents  
11 arranged, negotiated, processed, and consummated such loans,  
12 wherein Respondents serviced and collected payments on such  
13 loans, and wherein Respondents sold or offered to sell, bought  
14 or offered to buy, or exchanged or offered to exchange  
15 promissory notes secured directly or collaterally by a lien on  
16 real property and performed services for the holders thereof,  
17 including servicing and collecting payments on such promissory  
18 notes.

VII

19  
20 In so acting as real estate brokers, as described in  
21 Paragraph VI, above, Respondents accepted or received funds in  
22 trust (herein "trust funds") from or on behalf of lenders,  
23 investors, borrowers and others in connection with the mortgage  
24 loan brokerage activities described in Paragraph VI, above, and  
25 thereafter from time to time made disbursements of said trust  
26 funds.  
27

VII

Beginning on or before January 1, 2003 through on or after August 31, 2004, MCC maintained the following accounts:

<u>TITLE AND ACCOUNT NUMBERS</u>	<u>BANK</u>
Marin Capital Corporation Escrow Account Account No. 0003-309499 (hereinafter "Bank #1")	Bank of Marin 4460 Redwood Highway San Rafael, CA 94903
Marin Capital Corporation Loan Servicing Account Account No. 0003-311263 (hereinafter "Bank #2")	Bank of Marin 4460 Redwood Highway San Rafael, CA 94903
Marin Capital Corporation FBO Steven Rempis Account No. 0003-312642 (hereinafter "Bank #3")	Bank of Marin 4460 Redwood Highway San Rafael, CA 94903
Marin Capital Corporation FBO Anthony Marelich Account No. 0003-311495 (hereinafter "Bank #4")	Bank of Marin 4460 Redwood Highway San Rafael, CA 94903
Marin Capital Corporation FBO Christopher A. Spina Account No. 0003-311362 (hereinafter "Bank #5")	Bank of Marin 4460 Redwood Highway San Rafael, CA 94903

IX

Between on or about January 1, 2003 through August 31, 2004, in connection with the collection and disbursement of said trust funds MCC failed to place trust funds entrusted to MCC into the hands of a principal on whose behalf the funds were received, into a neutral escrow depository, or into a trust fund account in the name of MCC as trustee at a bank or other financial institution, in conformance with the requirements of section 10145 of the Code and Section 2832(a) of the Regulations

1 in that Respondent placed such funds in Bank #1, 2, 3,4, and 5,  
2 accounts that were not in the name of MCC as trustee.

3 X

4 MCC was and is a threshold broker, subject to the  
5 requirements of Section 10232, et seq., of the Code. Between  
6 January 1, 2003 and August 31, 2004, in course of the mortgage  
7 and multi-lender loan origination, servicing and trust fund  
8 handling activities, MCC:

9 (a) For the year 2003, the annual Mortgage Loan/Trust Deed  
10 Report RE 881, pursuant to Section 10232.2(c) of the Code (also  
11 known as Business Activity Report), presented inaccurate  
12 information in Section IV.

13 (b) Failed to provide lenders and/or purchasers the  
14 statement required by Section 10232.4(a) of the Code.

15 XI

16 MCC was a real estate broker meeting the "multi-  
17 lender" criteria of Section 10229 (2003) of the Code, in that  
18 MCC offered to sell and sold notes subject to Section 10229 of  
19 the Code secured directly by an interest in the same real  
20 property or undivided interests in notes secured directly by  
21 real property equivalent to a series transaction. MCC failed to  
22 file an amended threshold notification within 30 days after  
23 commencement of loan servicing activities expected to meet the  
24 threshold level as required by 10229 of the Code.

25 \\ \\



XII

1                   Within the three-year period immediately preceding the  
2 filing of this Accusation MCC, in connection with the mortgage  
3 loan brokerage activities described in Paragraph VI, failed to  
4 notify the Commissioner within the next business day that MCC  
5 had closed his main office located at 4340 Redwood Hwy Suite F-  
6 220, San Rafael, California and opened a new main office located  
7 at 4340 Redwood Hwy Suite D-320, San Rafael, California as  
8 required by Section 2715 of Title 10 of the California Code of  
9 Regulation (hereinafter the Regulations).  
10

XIII

11                   NESERALLA failed to exercise reasonable supervision  
12 over the acts of MCC in such a manner as to allow the acts and  
13 omissions on the part of MCC described above, to occur.  
14

XIV

15                   The facts alleged above are grounds for the suspension  
16 or revocation of Respondents licenses and license rights under  
17 the following sections of the Code and Regulations:  
18

19                   (1) As to Paragraph IX, under Section 10145 of the  
20 Code in conjunction with Section 2832 of the Regulations;

21                   (2) As to Paragraph X(a), under Section 10232.2(c) in  
22 conjunction with Section 10177(d) of the Code;

23                   (3) As to Paragraph X(b), under Section 10232.4(a) in  
24 conjunction with Section 10177(d) of the Code;


25                   (4) As to Paragraph XI, under Section 10229(a) (2003)  
26 in conjunction with Section 10177(d) of the Code;  
27

1 (5) As to Paragraph XII, under Section 10177(d) of  
2 the Code in conjunction with Section 2715 of the Regulations;

3 XV

4 The facts alleged above as to Paragraph XIII of the  
5 Accusation are grounds for the suspension or revocation of the  
6 licenses and license rights of NESERALLA under Section 10177(g)  
7 and/or Section 10177(h) of the Code and Section 10159.2 of the  
8 Code in conjunction with Section 10177(d) of the Code.

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

16  
17   
18 E. J. HABERER II  
19 Deputy Real Estate Commissioner

20 Dated at Oakland, California,  
21 this 6 day of September 2005