

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

FILED
OCT 11 2006

DEPARTMENT OF REAL ESTATE

By David B. Seals

4 Telephone: (916) 227-0789
5
6
7

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-9625 SF
12 MICHAEL JOSEPH SCHNEIDER and) OAH NO. N-2006080919
13 CALIFORNIA PLAN INC.,)
14 Respondents.) STIPULATION AND AGREEMENT
IN SETTLEMENT AND ORDER

15 It is hereby stipulated by and between MICHAEL JOSEPH
16 SCHNEIDER and CALIFORNIA PLAN, INC. (herein after "Respondents"),
17 and the Complainant, acting by and through David B. Seals,
18 Counsel for the Department of Real Estate, as follows for the
19 purpose of settling and disposing of the Accusation filed on
20 June 28, 2006, 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 Stipulation and Agreement in Settlement.

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

5 3. A Notice of Defense was filed on July 28, 2006 by
6 Respondents, pursuant to Section 11505 of the Government Code for
7 the 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 right 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 4. This Stipulation is based on the factual allegations
19 contained in the Accusation. In the interests of expedience and
20 economy, Respondents choose not to contest these allegations, but
21 to remain silent and understand that, as a result thereof, these
22 factual allegations, without being admitted or denied, will serve
23 as a prima facie basis for the disciplinary action stipulated to
24 herein. The Real Estate Commissioner shall not be required to
25 provide further evidence to prove said factual allegations.

26 ///

27 ///

1 MICHAEL JOSEPH SCHNEIDER under Section 10177(h) of the Code and
2 Section 2725 of the Regulations in conjunction with Section
3 10177(d) of the Code.

4 ORDER

5 1. All licenses and licensing rights of Respondents

6 MICHAEL JOSEPH SCHNEIDER and CALIFORNIA PLAN, INC. under the Real
7 Estate Law are revoked.

8 2. Respondents shall not be eligible to apply for the
9 issuance of a restricted or unrestricted real estate license
10 until two (2) years have elapsed from the effective date of this
11 Decision.

12
13 DATED: Sept. 27, 2006



14 DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE


15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

* * *

I have read the Stipulation and Agreement, have discussed it with my counsel if appropriate, 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.

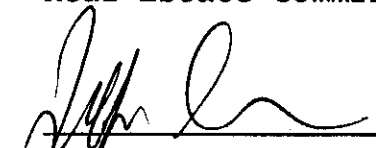
DATED: 9-19-06 
MICHAEL JOSEPH SCHNEIDER
Respondent

DATED: 9-19-06 
CALIFORNIA PLAN, INC.
Respondent

* * *

The foregoing Stipulation and Agreement in Settlement is hereby adopted by the Real Estate Commissioner as his Decision and Order and shall become effective at 12 o'clock noon on **NOV - 1 2006**

IT IS SO ORDERED 10-10-06

JEFF DAVI
Real Estate Commissioner


1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007
5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
JUN 28 2008

DEPARTMENT OF REAL ESTATE



8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12 MICHAEL JOSEPH SCHNEIDER and,) NO. H-9625 SF
13 CALIFORNIA PLAN INC.,) ACCUSATION
14 Respondents.)
15)

16 The Complainant, E. J. Haberer II, a Deputy Real
17 Estate Commissioner of the State of California for cause of
18 Accusation against MICHAEL JOSEPH SCHNEIDER (hereinafter
19 "Respondent SCHNEIDER") and CALIFORNIA PLAN INC. (hereinafter
20 "Respondent CP") is informed and alleges as follows:

21 FIRST CAUSE OF ACCUSATION

22 I

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

26 ///
27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

II

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

III

Respondent SCHNEIDER is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the Code as real estate broker and as the designated officer of Respondent CP.

IV

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

V

That at all times herein mentioned, Respondent CP, 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, for or in expectation of compensation by soliciting borrowers or lenders for or negotiating loans or collecting payments or performing services for borrowers or lenders or note owners in

1 connection with loans secured directly or collaterally by liens
2 on real property or on a business opportunity.

3 VI

4 That at all times mentioned herein, Respondent CP
5 accepted or received funds in trust (hereafter trust funds) from
6 and on behalf of its principals placing them in bank accounts
7 and at times thereafter made disbursements of such funds.

8 VII

9 Within three years prior to the filing of this
10 Accusation, Respondent CP maintained at least 7 bank accounts
11 into which trust funds were placed in connection with its
12 mortgage loan activities. One of the accounts is located at Bank
13 of the West, 3888 Stevens Creek Blvd., San Jose, CA 95117-1294,
14 Account No. 015-008482. Six of the accounts are located at
15 Comerica Bank, 333 W. Santa Clara Street, San Jose, CA 95113-
16 4350, Account Nos. 1890615220, 1890614793, 1890617507,
17 9409645240, 9800657596 and 9800657943.

18 VIII

19 During the three years prior to the filing of this
20 Accusation, Respondent CP was required to file annual reports in
21 compliance with Section 10232.2 of the Code.

22 IX

23 During the three years prior to the filing of this
24 Accusation, Respondent CP filed reports required by Section
25 10232.2 of the Code but failed to include any information
26 regarding trust funds held at Bank of the West in violation of
27 Section 10232.2 of the Code.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

X

During the three years prior to the filing of this Accusation, Respondent CP was required to file quarterly reports in compliance with Section 10232.25 of the Code.

XI

During the three years prior to the filing of this Accusation, Respondent CP filed reports required by Section 10232.25 of the Code but failed to include any information regarding trust funds held at Bank of the West in violation of Section 10232.2 of the Code.

XII

Within the last three years, Respondent SCHNEIDER failed to exercise reasonable supervision over the activities of CP for which a real estate license is required. In particular, SCHNEIDER caused, permitted, and/or ratified the conduct described in the First Causes of Accusation and/or failed to take reasonable steps to implement effective supervision that would have prevented it, including but not limited to both: (1) the establishment of policies, rules, procedures, and systems to review, oversee, inspect and manage the handling of loans, and the verification and disclosure of material information; and, (2) the establishment of systems for monitoring compliance with such policies, rules, procedures, and systems, to ensure compliance by the company with the Real Estate Law.

///
///
///

1 a deed of trust in favor of Lender Poch or his nominee at the
2 time Respondent CP received the funds and made the promise. In
3 fact, Respondent CP failed to record a deed of trust in favor of
4 Lender Poch or his nominee on any of the properties listed above
5 in violation of Section 10234(a) of the Code.

6 XVI

7 Within the last three years, Respondent SCHNEIDER
8 failed to exercise reasonable supervision over the activities of
9 CP for which a real estate license is required. In particular,
10 SCHNEIDER caused, permitted, and/or ratified the conduct
11 described in the Second Cause of Accusation and/or failed to
12 take reasonable steps to implement effective supervision that
13 would have prevented it, including but not limited to both: (1)
14 the establishment of policies, rules, procedures, and systems to
15 review, oversee, inspect and manage the handling of loans, and
16 the verification and disclosure of material information; and,
17 (2) the establishment of systems for monitoring compliance with
18 such policies, rules, procedures, and systems, to ensure
19 compliance by the company with the Real Estate Law.

20 THIRD CAUSE OF ACCUSATION

21 XVII

22 There is hereby incorporated in this Third, separate
23 and distinct, Cause of Accusation all of the allegations
24 contained in Paragraphs I through VII of the First Cause of
25 Accusation with the same force and effect as if herein fully set
26 forth.

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

XVIII

On or about November 1, 2005, Clinton Cooper (hereinafter "Lender Cooper"), gave Respondent CP a check in the amount of \$200,000 for the purpose of funding a mortgage loan negotiated by Respondent CP on the real property located at 1811 Chestnut Street, Berkeley (hereinafter the "Chestnut Property").

XIX

Respondent CP informed Lender Cooper that a deed of trust would be recorded on the Chestnut Property. Lender Cooper relied on the representation of Respondent CP in deciding to lend the \$200,000 on the Chestnut Property. In truth and fact, Respondent CP did not intend to record a deed of trust in favor of Lender Cooper or his nominee at the time Respondent CP received the funds and made the promise. In fact, Respondent CP failed to record a deed of trust in favor of Lender Cooper or his nominee on the Chestnut Property in violation of Section 10234(a) of the Code.

XX

Within the last three years, Respondent SCHNEIDER failed to exercise reasonable supervision over the activities of CP for which a real estate license is required. In particular, SCHNEIDER caused, permitted, and/or ratified the conduct described in the Third Cause of Accusation and/or failed to take reasonable steps to implement effective supervision that would have prevented it, including but not limited to both: (1) the establishment of policies, rules, procedures, and systems to review, oversee, inspect and manage the handling of loans, and

1 the verification and disclosure of material information; and,
2 (2) the establishment of systems for monitoring compliance with
3 such policies, rules, procedures, and systems, to ensure
4 compliance by the company with the Real Estate Law.

5 FOURTH CAUSE OF ACCUSATION

6 XXI

7 There is hereby incorporated in this Fourth, separate
8 and distinct, Cause of Accusation all of the allegations
9 contained in Paragraphs I through VII of the First Cause of
10 Accusation with the same force and effect as if herein fully set
11 forth.

12 XXII

13 On or about December 16, 2005, Mark Aspromonte
14 (hereinafter "Lender M. Aspromonte"), gave Respondent CP a check
15 in the amount of \$300,000 for the purpose of funding a mortgage
16 loan negotiated by Respondent CP on the real property located at
17 430 Imperial Drive, Pacifica (hereinafter the "Imperial
18 Property").

19 XXIII

20 Respondent CP informed Lender M. Aspromonte that a
21 deed of trust would be recorded on the Imperial Property. Lender
22 M. Aspromonte relied on the representation of Respondent CP in
23 deciding to lend the \$300,000 on the Imperial Property. In truth
24 and fact, Respondent CP did not intend to record a deed of trust
25 in favor of Lender M. Aspromonte or his nominee at the time
26 Respondent CP received the funds and made the promise. In fact,
27 Respondent CP failed to record a deed of trust in favor of

1 Lender M. Aspromonte or his nominee on the Imperial Property in
2 violation of Section 10234(a) of the Code.

3 XXIV

4 Within the last three years, Respondent SCHNEIDER
5 failed to exercise reasonable supervision over the activities of
6 CP for which a real estate license is required. In particular,
7 SCHNEIDER caused, permitted, and/or ratified the conduct
8 described in the Fourth Cause of Accusation and/or failed to
9 take reasonable steps to implement effective supervision that
10 would have prevented it, including but not limited to both: (1)
11 the establishment of policies, rules, procedures, and systems to
12 review, oversee, inspect and manage the handling of loans, and
13 the verification and disclosure of material information; and,
14 (2) the establishment of systems for monitoring compliance with
15 such policies, rules, procedures, and systems, to ensure
16 compliance by the company with the Real Estate Law.

17 FIFTH CAUSE OF ACCUSATION

18 XXV

19 There is hereby incorporated in this Fifth, separate
20 and distinct, Cause of Accusation all of the allegations
21 contained in Paragraphs I through VII of the First Cause of
22 Accusation with the same force and effect as if herein fully set
23 forth.

24 XXVI

25 During the period from July 17, 2003 through July 21,
26 2005, Aspromonte Investments, LLC through its president Elena
27 Aspromonte (hereinafter "Lender Aspromonte Investments, LLC"),

1 gave Respondent CP the following funds for the purpose of funding
2 mortgage loans negotiated by Respondent CP on the properties
3 listed below on or about the dates specified:

4	DATE	ADDRESS	AMOUNT
5	July 17, 2003	1 Miner Road	\$300,000
6		Orinda	
7	February 25, 2005	2701 Tiber Ave.	\$525,000
8		Davis	
9	March 4, 2005	420 Severn Lane	\$350,000
10		Hillsborough	
11	July 21, 2005	1473 Mary Ann Drive	\$400,000
12		Santa Clara	

13 XXVII

14 Respondent CP informed Lender Aspromonte Investments,
15 LLC that a deed of trust would be recorded on each of the above-
16 named properties. Lender Aspromonte Investments, LLC relied on
17 the representation of Respondent CP in deciding to lend the
18 amounts indicated on the properties listed above. In truth and
19 fact, Respondent CP did not intend to record a deed of trust in
20 favor of Lender Aspromonte Investments, LLC or its nominee at the
21 time Respondent CP received the funds and made the promise. In
22 fact, Respondent CP failed to record a deed of trust in favor of
23 Lender Aspromonte Investments, LLC or its nominee on any of the
24 properties listed above in violation of Section 10234(a) of the
25 Code.

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

XXVIII

Within the last three years, Respondent SCHNEIDER failed to exercise reasonable supervision over the activities of CP for which a real estate license is required. In particular, SCHNEIDER caused, permitted, and/or ratified the conduct described in the Fifth Cause of Accusation and/or failed to take reasonable steps to implement effective supervision that would have prevented it, including but not limited to both: (1) the establishment of policies, rules, procedures, and systems to review, oversee, inspect and manage the handling of loans, and the verification and disclosure of material information; and, (2) the establishment of systems for monitoring compliance with such policies, rules, procedures, and systems, to ensure compliance by the company with the Real Estate Law.

SIXTH CAUSE OF ACCUSATION

XXIX

There is hereby incorporated in this Sixth, separate and distinct, Cause of Accusation all of the allegations contained in Paragraphs I through VII of the First Cause of Accusation with the same force and effect as if herein fully set forth.

XXX

During the period from February 5, 1999 through June 23, 2005, the Elena F. Aspromonte Trust through its trustee Elena Aspromonte (hereinafter "Lender Elena F. Aspromonte Trust"), gave Respondent CP the following funds for the purpose
///

1 of funding mortgage loans negotiated by Respondent CP on the
2 properties listed below on or about the dates specified:

3	<u>DATE</u>	<u>ADDRESS</u>	<u>AMOUNT</u>
4	July 26, 2000	1922 Bird Avenue	\$200,000
5		San Jose	
6	July 26, 2000	1871 Cordilleras Dr.	\$200,000
7		Redwood City	
8	June 23, 2005	656 Douglas Street	\$550,000
9		San Francisco	

10 XXXI

11 Respondent CP informed Lender Elena F. Aspromonte
12 Trust that a deed of trust would be recorded on each of the
13 above-named properties. Lender Elena F. Aspromonte Trust relied
14 on the representation of Respondent CP in deciding to lend the
15 amounts indicated on the properties listed above. In truth and
16 fact, Respondent CP did not intend to record a deed of trust in
17 favor of Lender Elena F. Aspromonte Trust or its nominee at the
18 time Respondent CP received the funds and made the promise. In
19 fact, Respondent CP failed to record a deed of trust in favor of
20 Lender Elena F. Aspromonte Trust or its nominee on any of the
21 properties listed above in violation of Section 10234(a) of the
22 Code.

23 XXXII

24 Within the last three years, Respondent SCHNEIDER
25 failed to exercise reasonable supervision over the activities of
26 CP for which a real estate license is required. In particular,
27 SCHNEIDER caused, permitted, and/or ratified the conduct

1 described in the Sixth Cause of Accusation and/or failed to take
2 reasonable steps to implement effective supervision that would
3 have prevented it, including but not limited to both: (1) the
4 establishment of policies, rules, procedures, and systems to
5 review, oversee, inspect and manage the handling of loans, and
6 the verification and disclosure of material information; and,
7 (2) the establishment of systems for monitoring compliance with
8 such policies, rules, procedures, and systems, to ensure
9 compliance by the company with the Real Estate Law.

10 SEVENTH CAUSE OF ACCUSATION

11 XXXIII

12 There is hereby incorporated in this Seventh, separate
13 and distinct, Cause of Accusation all of the allegations
14 contained in Paragraphs I through VII of the First Cause of
15 Accusation with the same force and effect as if herein fully set
16 forth.

17 XXXIV

18 On or about April 7, 1995, Aspromonte Enterprises, Inc.
19 (hereinafter "Lender Aspromonte Enterprises, Inc."), gave
20 Respondent CP a check in the amount of \$149,470.69 for the
21 purpose of funding a mortgage loan negotiated by Respondent CP on
22 the real property located at 987 and 1113 Crockett Avenue,
23 Campbell (hereinafter the "Crockett Properties").

24 XXXV

25 Respondent CP informed Lender Aspromonte Enterprises,
26 Inc. that a deed of trust would be recorded on the Crockett
27 Properties. Lender Aspromonte Enterprises, Inc. relied on the

1 representation of Respondent CP in deciding to lend the \$300,000
2 on the Crockett Properties. In truth and fact, Respondent CP did
3 not intend to record a deed of trust in favor of Lender
4 Aspromonte Enterprises, Inc. or its nominee at the time
5 Respondent CP received the funds and made the promise. In fact,
6 Respondent CP failed to record a deed of trust in favor of Lender
7 Aspromonte Enterprises, Inc. or its nominee on the Crockett
8 Properties in violation of Section 10234(a) of the Code.

9 XXXVI


10 Within the last three years, Respondent SCHNEIDER
11 failed to exercise reasonable supervision over the activities of
12 CP for which a real estate license is required. In particular,
13 SCHNEIDER caused, permitted, and/or ratified the conduct
14 described in the Seventh Cause of Accusation and/or failed to
15 take reasonable steps to implement effective supervision that
16 would have prevented it, including but not limited to both: (1)
17 the establishment of policies, rules, procedures, and systems to
18 review, oversee, inspect and manage the handling of loans, and
19 the verification and disclosure of material information; and,
20 (2) the establishment of systems for monitoring compliance with
21 such policies, rules, procedures, and systems, to ensure
22 compliance by the company with the Real Estate Law.

23 XXXVII

24 The acts and/or omissions of Respondents CP and
25 SCHNEIDER described above are grounds for the revocation or
26 suspension of the licenses of Respondent CP under Sections
27 10176(a) and (e) of the Code and under Section 10177(d) of the

1 Code in conjunction with Sections 10232.2 and 10234(a) of the
2 Code and are grounds for the revocation or suspension of the
3 licenses of Respondent SCHNEIDER only under Section 10177(h) of
4 the Code and Section 2725 of the Regulations in conjunction with
5 Section 10177(d) of the Code.

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

13
14 
15 E. J. HABERER II
Deputy Real Estate Commissioner

16 Dated at Oakland, California,
17 this 27th day of JUNE, 2006.