

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

4 Telephone: (916) 227-0789

FILED
AUG 10 2007

DEPARTMENT OF REAL ESTATE
By K. J. [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

11 In the Matter of the Accusation of) NO. H-9818 SF
12))
13 LOIS CAMILLE MOWAT,) STIPULATION AND AGREEMENT
14 Respondent.) IN SETTLEMENT
) AND ORDER

15 It is hereby stipulated by and between LOIS CAMILLE
16 MOWAT (hereinafter "Respondent") and her attorney of record,
17 Shannon B. Jones, and the Complainant, acting by and through
18 David B. Seals, Counsel for the Department of Real Estate, as
19 follows for the purpose of settling and disposing of the
20 Accusation filed on December 20, 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
23 Respondents at a formal hearing on the Accusation, which hearing
24 was to be held in accordance with the provisions of the
25 Administrative Procedure Act (APA), shall instead and in place
26 thereof be submitted solely on the basis of the provisions of
27 this Stipulation and Agreement in Settlement.

1 2. Respondent has received, read and understands 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 January 8, 2007
6 by Respondent, pursuant to Section 11505 of the Government Code
7 for the purpose of requesting a hearing on the allegations in
8 the Accusation. Respondent hereby freely and voluntarily
9 withdraws said Notice of Defense. Respondent acknowledges that
10 she understand that by withdrawing said Notice of Defense she
11 will thereby waive her right to require the Commissioner to
12 prove the allegations in the Accusation at a contested hearing
13 held in accordance with the provisions of the APA and that she
14 will waive other rights afforded to her 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
19 allegations contained in the Accusation. In the interests of
20 expedience and economy, Respondent chooses not to contest these
21 allegations, but to remain silent and understands that, as a
22 result thereof, these factual allegations, without being
23 admitted or denied, will serve as a prima facie basis for the
24 disciplinary action stipulated to herein. The Real Estate
25 Commissioner shall not be required to provide further evidence
26 to prove said factual allegations.

27 ///

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

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

19 7. Respondent has received, read and understands the
20 "Notice Concerning Costs of Subsequent Audits". Respondent
21 understands that by agreeing to this Stipulation and Agreement
22 in Settlement, the findings set forth below in the DETERMINATION
23 OF ISSUES become final, and that the Commissioner may charge
24 Respondent for the costs of any audit for which they are charged
25 pursuant to Section 10148 of the Business and Professions Code
26 (hereinafter the "Code"). The reasonable cost of the audits

27 ///

1 which led to this disciplinary action is \$3,159.78. The maximum
2 cost of the subsequent audits will not exceed \$3,159.78.

3
4 DETERMINATION OF ISSUES

5 I

6 By reason of the foregoing stipulations, admissions
7 and waivers and solely for the purpose of settlement of the
8 pending Accusation without a hearing, it is stipulated and
9 agreed that the facts alleged above are grounds for the
10 suspension or revocation of the licenses and license rights of
11 Respondent LOIS CAMILLE MOWAT under Sections 10145, 10231.1,
12 10240/10241, 10248(f) and 10248(k) of the Code and Sections
13 2726, 2831, 2831.1 and 2831.2 of the Regulations, all in
14 conjunction with Section 10177(d) of the Code.

15 ORDER

16 I

17 All licenses and licensing rights of Respondent LOIS
18 CAMILLE MOWAT under the Real Estate Law are suspended for a
19 period of one hundred and twenty (120) days from the effective
20 date of this Order; provided, however, that:

21 1. Sixty (60) days of said suspension shall be stayed
22 for two (2) years upon the following terms and conditions:

- 23 A. Respondent shall obey all laws, rules and
24 regulations governing the rights, duties and
25 responsibilities of a real estate licensee in the
26 State of California; and

27 ///

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

11 2. The remaining sixty (60) days of said 120-day
12 suspension shall be stayed upon the condition that Respondent
13 petition pursuant to Section 10175.2 of the Business and
14 Professions Code and pays a monetary penalty pursuant to Section
15 10175.2 of the Business and Professions Code at a rate of \$100
16 for each day of the suspension for a total monetary penalty of
17 \$6000:

18 A. Said payment shall be in the form of a cashier's
19 check or certified check made payable to the
20 Recovery Account of the Real Estate Fund. Said
21 check must be delivered to the Department prior
22 to the effective date of the Order in this
23 matter.

24 B. No further cause for disciplinary action against
25 the Real Estate licenses of said Respondent
26 occurs within two (2) years from the effective
27 date of the decision in this matter.

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

C. If Respondent fails to pay the monetary penalty
as provided above prior to the effective date of
this Order, the stay of the suspension shall be
vacated as to Respondent and the order of
suspension shall be immediately executed, under
this Paragraph I of this Order, in which event
Respondent shall not be entitled to any repayment
nor credit, prorated or otherwise, for the money
paid to the Department under the terms of this
Order.

D. If Respondent pays the monetary penalty and any
other moneys due under this Stipulation and
Agreement and if no further cause for
disciplinary action against the real estate
licenses of Respondent occurs within two (2)
years from the effective date of this Order, the
entire stay hereby granted under Paragraphs I
shall become permanent.

3. Pursuant to Section 10148 of the Business and
Professions Code, Respondent shall pay the Commissioner's
reasonable cost for the audit which led to this disciplinary
action (\$3,159.78), if such costs have not already been paid,
and a subsequent audit (not to exceed \$3,159.78) to determine if
Respondent has corrected the trust fund violation(s) found in
the Determination of Issues. In calculating the amount of the
Commissioner's reasonable cost, the Commissioner may use the
estimated average hourly salary for all persons performing

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

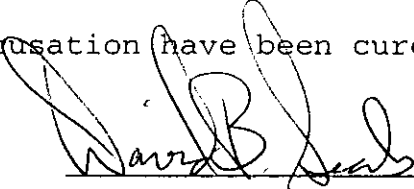
16 4. Respondent shall, prior to the date this
17 Stipulation becomes effective, submit proof satisfactory to the
18 Commissioner of having taken and successfully completed the
19 continuing education course on trust fund accounting and
20 handling specified in subdivision (a) of Section 10170.5 of the
21 Business and Professions Code. Proof of satisfaction of this
22 requirement includes evidence that Respondent has successfully
23 completed the trust fund account and handling continuing
24 education course within 120 days prior to the effective date of
25 the Stipulation in this matter. If Respondent fails to satisfy
26 this condition, the Commissioner may order suspension of

27 ///

1 Respondent's license until Respondent submits satisfactory proof
2 of completion of the course.

3 5. Prior to the date this Stipulation becomes
4 effective, Respondent shall provide evidence satisfactory to the
5 Real Estate Commissioner that the shortages alleged in the
6 Accusation have been cured. If Respondent fails to provide such
7 evidence prior to the effective date of this Order all licenses
8 of Respondent shall be immediately suspended until satisfactory
9 evidence has been provided to the Real Estate Commissioner that
10 the shortages alleged in the Accusation have been cured.

11
12 DATED: July 2, 2007



DAVID B. SEALS, Counsel
DEPARTMENT OF REAL ESTATE

13
14 * * *

15 I have read the Stipulation and Agreement, have
16 discussed it with my counsel, and its terms are understood by me
17 and are agreeable and acceptable to me. I understand that I am
18 waiving rights given to me by the California Administrative
19 Procedure Act (including but not limited to Sections 11506,
20 11508, 11509, and 11513 of the Government Code), and I willingly,
21 intelligently, and voluntarily waive those rights, including the
22 right of requiring the Commissioner to prove the allegations in
23 the Accusation at a hearing at which I would have the right to
24 cross-examine witnesses against me and to present evidence in
25 defense and mitigation of the charges.

26 DATED: June 22, 2007



LOIS CAMILLE MOWAT
Respondent

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

DATED: June 29, 2007



SHANNON B. JONES
Attorney for Respondent

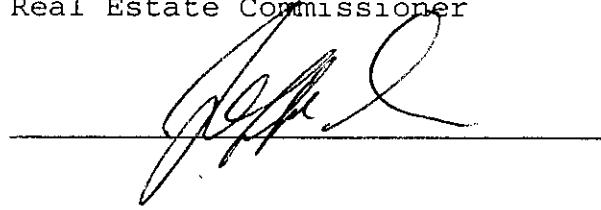
* * *

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 AUG 31 2007

IT IS SO ORDERED

7 26 07

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
DEC 20 2006

DEPARTMENT OF REAL ESTATE

[Signature]

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

11 * * *

12 In the Matter of the Accusation of)
13) NO. H-9818 SF
14 LOIS CAMILLE MOWAT,) ACCUSATION
15)
16 Respondent.)

17 The Complainant, E. J. Haberer II, a Deputy Real
18 Estate Commissioner of the State of California for cause of
19 Accusation against LOIS CAMILLE MOWAT (hereinafter "Respondent")
20 is informed and alleges as follows:

21 I

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

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

II

Respondent 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 restricted real estate broker dba Real Estate Financing.

III

That at all times herein mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker in the State of California, within the meaning of Section 10131(d) of the Code by soliciting borrowers or lenders for or negotiating loans or collecting payments or performing services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

IV

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

V

From March 21, 2006 through March 28, 2006 an investigative audit (OK-05-0088) was performed by the Department of the records and bank records of Respondent for the period from January 1, 2005 to December 31, 2005, as said records related to her activities as a real estate broker.

///

1 VI

2 During the period covered by the audit Respondent
3 maintained two bank accounts into which trust funds were placed
4 for her licensed activities as follows:

5 "Trust #1" at Wells Fargo Bank, 80 Moraga Way, Orinda,
6 CA 94563 in the name of Lois C Mowat Real Estate Financing
7 Trust, Account No. 027-0046162.

8 "Trust #2" at Bank of Walnut Creek, 224 Brookwood
9 Road, Orinda, CA 94563 in the name of Lois Mowat REF Pham Trust,
10 Account No. 2252163.

11 VII

12 The adjusted balance of Trust #1 as of December 31,
13 2005 was Two Hundred Fifty Thousand Forty-Six and 58/100 Dollars
14 (\$250,048.58) and the trust fund accountability in the account
15 as of December 31, 2005 was Two Hundred Fifty Thousand and
16 00/100 Dollars (\$250,000.00). Therefore, Respondent, as of
17 December 31, 2005, had a trust fund shortage of Forty-Six and
18 58/100 Dollars (\$46.58).

19 VIII

20 The shortage in Trust #1 could not be identified or
21 accounted for.

22 IX

23 Respondent failed to maintain an accurate record of
24 all trust funds received and disbursed for Trust #1, in that,
25 the record did not identify from whom trust funds were received
26 in violation of Section 2831, Title 10, California Code of
27 Regulations (hereinafter the "Regulations").

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

Respondent failed to maintain an accurate record of all separate records for Trust #1, in that, the record for "Broker funds" and "unidentified/unaccounted for funds" set forth balances from prior periods that could not be verified in violation of Section 2831.1 of the Regulations.

XI

Respondent failed to reconcile on a monthly basis the balance of all separate beneficiary records with the record of all trust funds received and disbursed for Trust# 1 in violation of Section 2831.2 of the Regulations.

XII

The servicing agreements used by Respondent for multi-lender transactions were inadequate, in that, they did not contain a statement that "payments received on the note will be deposited immediately in a trust account" nor did they contain a statement that "payments received on the note shall be transmitted to the purchasers within 25 days after receipt by the agent" in violation of Section 10233 of the Code in conjunction with Section 10238(k) of the Code.

XIII

Respondent failed to obtain signed statements of investor qualification from each investor for each loan negotiated by her in violation of Section 10238(f) 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

XIV

Respondent failed to payoff Loan #05-0502-06 (Inter-Bay Corporation) and Loan #03-124-04 (Gorham) within 25 days of receiving the funds from the respective borrowers without a rollover agreement or a written authorization to hold the funds for longer than 25 days in violation of Section 10231.1 of the Code.

XV

Respondent failed to maintain a copy of the "Additional Required California Disclosures" page of the mortgage loan disclosure statement for borrowers, Bryan Scott and Linda Spellacy-Scott, Loan #0003882526, in violation of Section 10240/10241 of the Code.

XVI

Respondent failed to have a written broker-salesperson agreement with her salesperson, Heather Falconer Paterson, in violation of Section 2726 of the Regulations.

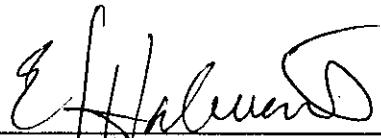
XVII

The acts and/or omissions of Respondent described above are grounds for the revocation or suspension of the licenses and license rights of Respondent under Sections 10145, 10231.1, 10240/10241, 10238(f) and 10238(k) of the Code and Sections 2726, 2831, 2831.1 and 2831.2 of the Regulations, all in conjunction with Section 10177(d) 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

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



E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California,
this 4th day of December, 2006.