

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

4 Telephone: (916) 227-0789

FILED
OCT 15 2007

DEPARTMENT OF REAL ESTATE

By *L. Spin*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of) NO. H-9908 SF
12)
13 JOHN MICHAEL FILIPPA,) STIPULATION AND AGREEMENT
14 Respondent.) IN SETTLEMENT
) AND ORDER

15 It is hereby stipulated by and between JOHN MICHAEL
16 FILIPPA (hereinafter "Respondent") and his attorney of record,
17 Phillip M. Adleson of ADLESON HESS & KELLY, and the Complainant,
18 acting by and through David B. Seals, Counsel for the Department
19 of Real Estate, as follows for the purpose of settling and
20 disposing of the Accusation filed on February 23, 2007, in this
21 matter:

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

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1 thereof be submitted solely on the basis of the provisions of
2 this Stipulation and Agreement in Settlement.

3 2. Respondent has received, read and understands the
4 Statement to Respondent, the Discovery Provisions of the APA and
5 the Accusation filed by the Department of Real Estate in this
6 proceeding.

7 3. A Notice of Defense was filed on March 9, 2007 by
8 Respondent, pursuant to Section 11505 of the Government Code for
9 the purpose of requesting a hearing on the allegations in the
10 Accusation. Respondent hereby freely and voluntarily withdraws
11 said Notice of Defense. Respondent acknowledges that he
12 understand that by withdrawing said Notice of Defense he will
13 thereby waive his right to require the Commissioner to prove the
14 allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that he will waive
16 other rights afforded to him in connection with the hearing such
17 as the right to present evidence in defense of the allegations
18 in the Accusation and the right to cross-examine witnesses.

19 4. This Stipulation is based on the factual
20 allegations contained in the Accusation. In the interests of
21 expedience and economy, Respondent chooses not to contest these
22 allegations, but to remain silent and understands that, as a
23 result thereof, these factual allegations, without being
24 admitted or denied, will serve as a prima facie basis for the
25 disciplinary action stipulated to herein. The Real Estate
26 Commissioner shall not be required to provide further evidence
27 to prove said factual allegations.

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

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1 which led to this disciplinary action is \$3,974.36. The maximum
2 cost of the subsequent audits will not exceed \$3,974.36.

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 JOHN MICHAEL FILIPPA under Sections 10145 and 10233,
12 in conjunction with Section 10238(k) of the Code and Sections
13 2831, 2831.1, 2831.2, 2832.1 and 2834 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 JOHN
18 MICHAEL FILIPPA under the Real Estate Law are suspended for a
19 period of sixty (60) days from the effective date of this Order;
20 provided, however, that:

21 1. Thirty (30) 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

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

2. The remaining thirty (30) days of said 60-day
suspension shall be stayed upon the condition that Respondent
petition pursuant to Section 10175.2 of the Business and
Professions Code and pays a monetary penalty pursuant to Section
10175.2 of the Business and Professions Code at a rate of
\$100.00 for each day of the suspension for a total monetary
penalty of \$3,000.00:

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

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

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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(2) 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 \$3,974.36, if such costs has not already been paid, and a
subsequent audit not to exceed \$3,974.36 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.

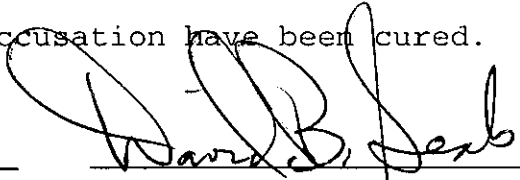
16 4. Respondent shall, prior to the date this
17 Stipulation becomes effective, submit proof satisfactory to the
18 Commissioner of having taken and successfully completed the
19 continuing education course on trust fund accounting and
20 handling specified in subdivision (a) of Section 10170.5 of the
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

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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: Sept 11, 2007


13 DAVID B. SEALS, Counsel
14 DEPARTMENT OF REAL ESTATE

15 * * *

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

27 DATED: 8/27/07

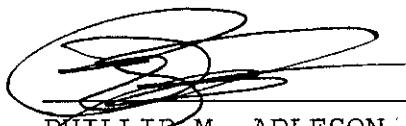

JOHN MICHAEL FILIPPA
Respondent

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

DATED: 8-6-07



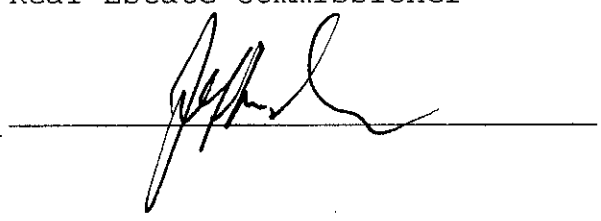
PHILLIP M. ADLESON
Attorney for Respondent

* * *

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 NOV - 5 2007

IT IS SO ORDERED 10-3-07

JEFF DAVI
Real Estate Commissioner



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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 real estate broker dba Pine Valley Mortgage and Investment Co.

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 his principals placing them in bank accounts and at times thereafter made disbursements of such funds.

V

From March 2, 2006 through March 16, 2006 an investigative audit (OK-05-0079) 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 his activities as a mortgage loan broker.

1 VI

2 At the end of the period covered by the audit,
3 Respondent maintained nine bank accounts (Trust #1 - Trust #9)
4 into which trust funds were placed for his licensed activities.
5 All nine accounts were maintained at Exchange Bank, P.O. Box
6 403, Santa Rosa, CA 95402-0403. Trust #1 was used for servicing
7 various private investor loans and to distribute impounded funds
8 to borrowers. The remaining eight accounts, Trust #2 - Trust #9,
9 were each interest bearing trust accounts with a single
10 different beneficiary for each account.

11 VII

12 The adjusted balance of Trust #1 as of December 31,
13 2005 was Thirteen Thousand Five Hundred Ninety-Nine and 06/100
14 Dollars (\$13,599.06) and the trust fund accountability in the
15 account as of December 31, 2005 was Twenty-Three Thousand Four
16 Hundred Nineteen and 30/100 Dollars (\$23,419.30). Respondent,
17 as of December 31, 2005, had a trust fund shortage of Nine
18 Thousand Eight Hundred Sixty-Nine and 24/100 Dollars
19 (\$9,869.24).

20 VIII

21 The shortage in Trust #1 was due to a negative balance
22 of \$10,000 in one account, over-disbursement to lenders of
23 \$4.63, and \$135.39 could not be identified.

24 IX

25 During the time covered by the audit, Respondent
26 failed to maintain an accurate record of all trust funds
27 received and disbursed for Trust #1, in that, the balance after

1 posting transaction were not done every day and not all deposits
2 or withdrawal were recorded in violation of Section 2831, Title
3 10, California Code of Regulations (hereinafter the
4 "Regulations").

5 X

6 During the time covered by the audit, Respondent
7 failed to maintain an accurate record of all separate records
8 for Trust #1, in that, there were no entries for deposits and no
9 record for "broker funds". There was also no record of all trust
10 funds received and disbursed for Trust #2 - Trust #9, all in
11 violation of Section 2831.1 of the Regulations.

12 XI

13 During the time covered by the audit, Respondent
14 failed to reconcile and maintain on a monthly basis the balance
15 of all separate beneficiary records with the record of all trust
16 funds received and disbursed for Trust# 1 in violation of
17 Section 2831.2 of the Regulations.

18 XII

19 During the time covered by the audit, the servicing
20 agreements used by Respondent were inadequate, in that, they did
21 not contain a statement that "payments received on the note will
22 be deposited immediately in a trust account" nor that payments
23 so deposited shall not be commingled with the assets of the
24 servicing agent or used for any transaction other than the
25 transaction for which the funds are received in violation of
26 Section 10233 of the Code in conjunction with Section 10238(k)
27 of the Code.

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XIII

During the time covered by the audit, Respondent caused the disbursement of trust funds from Trust #1 without the written consent of every principal who was an owner of the funds, causing the balance of the funds in the accounts to be an amount less than the existing aggregate trust fund liability of Respondent to all owners of said funds in violation of Section 10145 of the Code and Section 2832.1 of the Regulations.

XIV

During the time covered by the audit, Brandy Jo Wright was a signatory on Trust #1 and Allyson Filippa also signed checks on the account. However, neither Brandy Jo Wright nor Allyson Filippa was licensed by the Department or covered by a fidelity bond at least equal to the minimum amount of trust funds to which they had access at the time, in violation of Section 2834 of the Regulations.

XV

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 and 10233, in conjunction with Section 10238(k) of the Code and Sections 2831, 2831.1, 2831.2, 2832.1 and 2834 of the Regulations, all in conjunction with Section 10177(d) of the Code.

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XXI

The loan discussed in Paragraph XIX above is a covered loan within the meaning of Section 4970 of the Financial Code in that (a) it is a consumer loan as defined in Section 4970(d) of the Financial Code; and (b) the points and fees payable by the consumer exceeded 6% of the total loan amount.

XXII

The loan discussed in Paragraph XIX above was originated and serviced by Respondent.

XXIII

The note discussed in Paragraph XIX above contained a clause allowing the imposition of a prepayment penalty if the loan is accelerated as a result of default, a prohibited act in violation of Section 4973 of the Financial Code.

XXIV

The acts and/or omissions of Respondent described above are grounds for the suspension or revocation of Respondents' licenses and license rights under Sections 4975 subsection (a)(1) and (a)(2) of the Financial Code and Section 10176(i) or 10177(j) or 10177(g) of the Business and Professions Code.

XXV

The acts and/or omissions of Respondent described above are grounds for the assessment of penalties against Respondent pursuant to Section 4977(a) of the Financial Code.

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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 Respondent
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 E. J. HABERER II
10 Deputy Real Estate Commissioner

11 Dated at Oakland, California,
12 this 13th day of February, 2007.