

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED

APR - 2 2008

DEPARTMENT OF REAL ESTATE

By K. Contreras

BEFORE THE

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

9 In the Matter of the Accusation of)
10 SAXE MORTGAGE & FINANCIAL SERVICES,)
11 INC., a Corporation, and)
12 CLAY DUNCAN,)
13 Respondents.)

NO. H-10093 SF

STIPULATION AND AGREEMENT
IN SETTLEMENT
AND ORDER

14
15 It is hereby stipulated by and between Respondents SAXE
16 MORTGAGE & FINANCIAL SERVICES, INC. (herein "SAXE"), and CLAY
17 DUNCAN (herein "DUNCAN") (herein jointly "Respondents"),
18 individually and jointly by and through Steven L. Pollack,
19 attorney of record herein for Respondents, and the Complainant,
20 acting by and through Mary F. Clarke, Counsel for the Department
21 of Real Estate (herein "the Department"), as follows for the
22 purpose of settling and disposing of the Accusation filed on July
23 27, 2007 in this matter (herein "the Accusation"):

24 1. All issues which were to be contested and all
25 evidence which was to be presented by Complainant and
26 Respondents at a formal hearing on the Accusation, which
27 hearing was to be held in accordance with the provisions of the

1 Administrative Procedures Act (APA), shall instead and in place
2 thereof be submitted solely on the basis of the provisions of
3 this Stipulation and Agreement.

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

8 3. On August 13 2007, Respondents filed their Notices
9 of Defense pursuant to Section 11505 of the Government Code for
10 the purpose of requesting a hearing on the allegations in the
11 Accusation. Respondents hereby freely and voluntarily withdraw
12 said Notices of Defense. Respondents acknowledge that they
13 understand that by withdrawing said Notices of Defense they will
14 each thereby waive their rights to require the Commissioner to
15 prove the allegations in the Accusation at a contested hearing
16 held in accordance with the provisions of the APA, and that they
17 will waive other rights afforded to them in connection with the
18 hearing such as the right to present evidence in defense of the
19 allegations in the Accusation and the right to cross-examine
20 witnesses.

21 4. Respondents, pursuant to the limitations set forth
22 below, hereby admit that the factual allegations pertaining to
23 them in the Accusation filed in this proceeding are true and
24 correct and the Real Estate Commissioner shall not be required to
25 provide further evidence of such allegations.

26 5. It is understood by the parties that the Real
27 Estate Commissioner may adopt the Stipulation and Agreement as

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

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

17 7. Respondents understand that by agreeing to this
18 Stipulation and Agreement, Respondents jointly and severally
19 agree to pay, if not already paid, pursuant to Section 10148 of
20 the California Business and Professions Code (herein "Code"),
21 the cost of the audit which resulted in the determination that
22 Respondents committed the trust fund violation(s) found in
23 Paragraph I, below, of the Determination of Issues. The amount
24 of said costs is \$6,659.60. Respondents shall pay such cost
25 within 60 days of receiving an invoice from the Commissioner
26 detailing the activities performed during the audit and the
27 amount of time spent performing those activities.

1 Section 10145 of the Code and Section 2832 of the Regulations in
2 conjunction with Section 10177(d) of the Code;

3 (d) as to Paragraph IX(d) and Respondent Saxe under
4 Section 10145 of the Code and Section 2832.1 of the Regulations
5 in conjunction with Section 10177(d) of the Code;

6 (e) as to Paragraph IX(e) and Respondent Saxe under
7 Section 10159.5 of the Code and Section 2731 of the Regulations
8 in conjunction with Section 10177(d) of the Code;

9 (f) as to Paragraph IX(f) and Respondent Saxe under
10 Section 2950 of the Regulations in conjunction with Section
11 10177(d) of the Code;

12 (g) as to Paragraph IX(g) and Respondent Saxe under
13 Section 10231 of the Code in conjunction with Section 10177(d) of
14 the Code;

15 (h) as to Paragraph IX(h) and Respondent Saxe under
16 Section 10232.4 of the Code in conjunction with Section 10177(d)
17 of the Code;

18 (i) as to Paragraph IX(i) and Respondent Saxe under
19 Section 10231.2 of the Code in conjunction with Section 10177(d)
20 of the Code;

21 (j) as to Paragraph IX(j) and Respondent Saxe under
22 Section 10238(h)(2) of the Code in conjunction with Section
23 10177(d) of the Code;

24 (k) as to Paragraph IX(k) and Respondent Saxe under
25 Sections 10238(k)(3) and 10238(j)(4) of the Code in conjunction
26 with Section 10177(d) of the Code; and

27 (l) as to Paragraph X and Respondent DUNCAN under

1 Section 10159.2 of the Code in conjunction with Sections
2 10177(g), 10177(h), and 10177(d) of the Code.

3 ORDER

4 I

5 A. All licenses and licensing rights of Respondent
6 SAXE under the Real Estate Law are revoked; provided, however,
7 a restricted corporate real estate broker license shall be
8 issued to said Respondent pursuant to Section 10156.5 of the
9 Business and Professions Code if, within 90 days from the
10 effective date of the Decision entered pursuant to this Order,
11 the Respondent makes application for the restricted license and
12 pays to the Department of Real Estate the appropriate fee
13 therefore.

14 B. The restricted license issued to Respondent shall
15 be subject to Respondent submitting proof satisfactory to the
16 Commissioner that Respondent has cured the trust fund shortages
17 alleged in the Accusation.

18 C. The restricted license issued to Respondent
19 shall be subject to all of the provisions of Section 10156.7 of
20 the Business and Professions Code and to the following
21 limitations, conditions and restrictions imposed under
22 authority of Section 10156.6 of that Code:

23 1. The restricted license issued to Respondent may
24 be suspended prior to hearing by Order of the Real Estate
25 Commissioner in the event of Respondent's conviction or plea of
26 nolo contendere to a crime which is substantially related to
27 Respondent's fitness or capacity as a real estate licensee.

1 2. The restricted license issued to Respondent may
2 be suspended prior to hearing by Order of the Real Estate
3 Commissioner on evidence satisfactory to the Commissioner that
4 Respondent has violated provisions of the California Real
5 Estate Law, the Subdivided Lands Law, Regulations of the Real
6 Estate Commissioner or conditions attaching to the restricted
7 license.

8 3. Respondent shall not be eligible to apply for the
9 issuance of an unrestricted real estate license nor for the
10 removal of any of the conditions, limitations or restrictions
11 of a restricted license until two (2) years have elapsed from
12 the effective date of this Decision.

13 4. Respondents understand that by agreeing to this
14 Stipulation and Agreement, Respondents jointly and severally
15 agree to pay, if not already paid, pursuant to Section 10148 of
16 the California Business and Professions Code (herein "Code"),
17 the cost of the audit which resulted in the determination that
18 Respondents committed the trust fund violation(s) found in
19 Paragraph I, above, of the Determination of Issues. The amount
20 of said costs is \$6,659.60. Respondents SAXE and DUNCAN shall
21 pay such cost within 60 days of receiving an invoice from the
22 Commissioner. If Respondents fail to pay for the cost of the
23 audit within 60 days of mailing a notice of billing, the
24 Commissioner may suspend or revoke the broker's license or deny
25 renewal of the broker's license. The suspension or denial
26 shall remain in effect until the cost is paid or until the
27 broker's right to renew a license had expired.

1 therefor;

2 2. submits proof satisfactory to the Commissioner
3 that Respondent has cured the trust fund shortages alleged in the
4 Accusation.

5 3. submits proof satisfactory to the Commissioner
6 of having taken and completed at an accredited institution the
7 continuing education course on trust fund accounting and
8 handling specified in Paragraph (3) of subdivision (a) of
9 Section 10170.5 of the Business and Professions Code. Said
10 course must have been completed within 120 days prior to the
11 issuance of the restricted license. Credit against the
12 continuing education condition set forth in Paragraph "6" below
13 will be given for completion of this trust fund accounting and
14 handling course during the 120 days prior to the issuance of
15 the restricted license.

16 B. The restricted license issued to Respondent
17 shall be subject to all of the provisions of Section 10156.7 of
18 the Business and Professions Code and to the following
19 limitations, conditions and restrictions imposed under
20 authority of Section 10156.6 of that Code:

21 1. The restricted license issued to such Respondent
22 may be suspended prior to hearing by Order of the Real Estate
23 Commissioner in the event of the Respondent's conviction or
24 plea of nolo contendere to a crime which is substantially
25 related to Respondent's fitness or capacity as a real estate
26 licensee.

27 2. The restricted license issued to such Respondent

1 may be suspended prior to hearing by Order of the Real Estate
2 Commissioner on evidence satisfactory to the Commissioner that
3 the Respondent has violated provisions of the California Real
4 Estate Law, the Subdivided Lands Law, Regulations of the Real
5 Estate Commissioner or conditions attaching to the restricted
6 license.

7 3. Respondent shall not be eligible to apply for the
8 issuance of an unrestricted real estate license or for the
9 removal of any of the conditions, limitations or restrictions
10 of a restricted license until two (2) years have elapsed from
11 the effective date of this Decision.

12 4. Respondents understand that by agreeing to this
13 Stipulation and Agreement, Respondents jointly and severally
14 agree to pay, if not already paid, pursuant to Section 10148 of
15 the California Business and Professions Code (herein "Code"),
16 the cost of the audit which resulted in the determination that
17 Respondents committed the trust fund violation(s) found in
18 Paragraph I, above, of the Determination of Issues. The amount
19 of said costs is \$6,659.60. Respondents DUNCAN and SAXE shall
20 pay such cost within 60 days of receiving an invoice from the
21 Commissioner. If Respondents fail to pay for the cost of the
22 audit within 60 days of mailing a notice of billing, the
23 Commissioner may suspend or revoke the broker's license or deny
24 renewal of the broker's license. The suspension or denial shall
25 remain in effect until the cost is paid or until the broker's
26 right to renew a license had expired.

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I have read the Stipulation and Agreement and its terms and have discussed it with my attorney 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.

12/20/07
DATED

SAXE MORTGAGE & FINANCIAL SERVICES, INC.
Respondent

By [Signature]
CLAY DUNCAN
Designated Officer - Broker

12/20/07
DATED

[Signature]
CLAY DUNCAN
Respondent

* * *

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

12/20/07
DATED

[Signature]
Steven L. Pollack
Attorney for Respondent

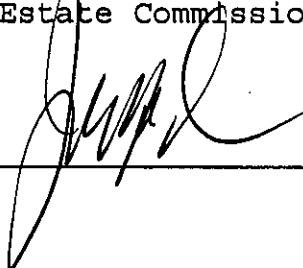
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The foregoing Stipulation and Agreement is hereby
adopted by me as my Decision in this matter and shall become
effective at 12 o'clock noon on April 22, 2008.

IT IS SO ORDERED 3-27, 2008.

JEFF DAVIS
Real Estate Commissioner



1 MARY F. CLARKE, Real Estate Counsel (SBN 186744)
Department of Real Estate
2 P. O. Box 187007
3 Sacramento, CA 95818-7007

4 Telephone: (916) 227-0789
-or- (916) 227-0780 (Direct)

FILED
JUL 27 2007

DEPARTMENT OF REAL ESTATE

By H. Contreras

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

11 * * *

12 In the Matter of the Accusation of)
13)
SAXE MORTGAGE & FINANCIAL)
14 SERVICES INC.,)
A Corporation, and,)
15 CLAY DUNCAN,)
16 Respondents.)

NO. H-10093 SF

ACCUSATION

17
18 The Complainant, E. J. HABERER II, a Deputy Real Estate
19 Commissioner of the State of California, for cause of Accusation
20 against SAXE MORTGAGE & FINANCIAL SERVICES, INC. (herein "SAXE")
21 and CLAY DUNCAN (herein "DUNCAN"), is informed and alleges as
22 follows:

23 I

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

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II

At all times herein mentioned, Respondents SAXE and DUNCAN (herein "Respondents") were and now are licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) (herein "the Code").

III

At all times herein mentioned herein SAXE was and now is licensed by the Department of Real Estate of the State of California (herein "the Department") as a corporate real estate broker by and through DUNCAN as designated officer-broker of SAXE to qualify said corporation and to act for said corporation as a real estate broker.

IV

At all times herein mentioned, DUNCAN was and now is licensed by the Department as a real estate broker, individually and as designated officer-broker of SAXE. As said designated officer-broker, DUNCAN 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 SAXE for which a license is required.

V

Whenever reference is made in an allegation in this Accusation to an act or omission of SAXE, such allegation shall be deemed to mean that the officers, directors, employees, agents, and/or real estate licensees employed by or associated with SAXE committed such act or omission while engaged in the

1 furtherance of the business or operations of such corporate
2 Respondent and while acting within the course and scope of their
3 authority and employment.

4 VI

5 At all times herein mentioned, Respondents engaged in
6 the business of, acted in the capacity of, advertised, or assumed
7 to act as real estate brokers within the State of California
8 within the meaning of Section 10131(e) of the Code, including
9 the operation and conduct of a mortgage loan brokerage with the
10 public wherein, on behalf of others, for compensation or in
11 expectation of compensation, Respondents solicited lenders and
12 borrowers for loans secured directly or collaterally by liens on
13 real property, wherein Respondent arranged, negotiated, serviced
14 and collected payments on such loans.

15 VII

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

22 VIII

23 The aforesaid trust funds accepted or received by
24 Respondents were deposited or caused to be deposited by
25 Respondents into one or more bank accounts (herein "trust fund
26 accounts") maintained by Respondents for the handling of trust
27 funds, including but not necessarily limited to the following

1 accounts maintained by Respondents at the Daly City, California
2 branch of Citibank and at the San Francisco branch of United
3 Commercial Bank:

- 4 (a) Saxe Mortgage & Financial Services Escrow Trustee
5 Account As Agent For, account number 947-4016970
6 ("Trust #1");
- 7 (b) Saxe Mortgage & Financial Services Trustee
8 Transfer Account, account number 947-023950
9 ("Trust #2");
- 10 (c) Saxe Mortgage & Financial Services Unclaimed
11 Funds, account number 947-4111995 ("Bank #1");
12 and,
- 13 (d) Saxe Mortgage & Financial Services, LLC ATF Henry
14 H & Ruth Kruger Rev Living Tru account number
15 0017480740 ("Bank #2").

16 IX

17 Between on or about January 1, 2005 and on or about
18 December 31, 2005, in connection with the mortgage loan brokerage
19 and trust fund handling activities described above, Respondent
20 SAXE:

- 21 (a) failed to keep a columnar record in chronological
22 sequence of all trust funds received and disbursed
23 from Bank #2 containing all the information
24 required by Section 2831 of Title 10, California
25 Code of Regulations (herein "the Regulations");
- 26 (b) failed to keep a separate record for each
27 beneficiary or transaction, accounting therein

1 for all funds which have been deposited into
2 Trust #2, containing all information required by
3 Section 2831.1 of the Regulations;

4 (c) failed to place trust funds entrusted to
5 Respondent into the hands of a principal on whose
6 behalf the funds were received, into a neutral
7 escrow depository, or into a trust fund account
8 in the name of Respondent as trustee at a bank or
9 other financial institution, in conformance with
10 the requirements of Section 10145 of the Code
11 and Section 2832(a) of the Regulations, in that
12 Respondent placed such funds into Bank #1 and
13 Bank #2, accounts that were not in the name of
14 Respondent as trustee;

15 (d) caused, suffered or permitted the balance of
16 funds in Trust #1 to be reduced to an amount
17 that, as of July 31, 2005, was \$290.99, less
18 than the liability of Respondent to all owners of
19 such funds without first obtaining the written
20 consent of each and every owner of such funds;
21 and caused, suffered or permitted the balance
22 of funds in Trust #2 to be reduced to an amount
23 that, as of July 31, 2005, was \$3,916.13, less
24 than the liability of Respondent to all owners
25 of such funds without first obtaining the
26 written consent of each and every owner of such
27 funds;

- 1 (e) failed to obtain a real estate license bearing
2 the the fictitious business name "Saxe Mortgage &
3 financial Services LLC ATF Henry & Ruth Kruger
4 Rev Living Tru," while conducting activities for
5 which a license was required;
- 6 (f) failed to provide signed escrow instructions for
7 in-house "broker escrows" performed for the
8 Duncan loan (#20050701), the Cois loan
9 (#20050608), and the Hogan loan (#20050603), in
10 violation of Regulation 2950;
- 11 (g) accepted and held in Bank #2 loan funds from
12 Henry and Ruth Kruger for an unspecified loan or
13 unspecified real property sales contract or
14 promissory note secured directly or collaterally
15 by a lien on real property, in violation of
16 Section 10231 of the Code;
- 17 (h) failed to provide a statement to the Department
18 and a loan disclosure statement to lender
19 Neri in connection with the Duncan loan
20 (#20050701), in violation of Section 10231.2
21 of the Code;
- 22 (i) failed to provide loan disclosure statements
23 prior to accepting loan funds from
24 lender/investors and prior to disbursing loan
25 funds to borrower in connection with the Hogan
26 loan (#20050603) and failed to provide loan
27 disclosure statements for the Cois loan

1 (#20050608) and the Duncan loan (#20050701)
2 in violation of Section 10232.4 of the Code;
3 (j) failed to retain a written statement setting
4 forth material considerations and facts relied
5 upon for the Hogan loan (#20050603) where
6 loan-to-value ratio was above the percentage
7 allowed pursuant to Section 10238(h)(1) of the
8 Code, in violation of Section 10238(h)(2) of the
9 Code; and,
10 (k) failed to provide a third quarter Trust Account
11 Report (DRE 852) for Trust #1 and Trust #2
12 prepared by a certified public account in
13 violation of Sections 10238(k)(3) and 10238(j)(4)
14 of the Code.

15 X

16 At all times mentioned herein, Respondent DUNCAN failed
17 to exercise reasonable supervision over the acts of Respondent
18 SAXE and its agents and employees in such a manner as to allow the
19 acts and omissions on the part of SAXE, described above, to occur.

20 XI

21 The facts alleged above are grounds for the suspension
22 or revocation of the licenses and license rights of Respondents
23 under the following provisions of the Code and/or the Regulations:

24 (a) As to Paragraph IX(a) and Respondent SAXE under
25 Section 10145 of the Code and Section 2831 of the
26 Regulations in conjunction with Section 10177(d)
27 of the Code;

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- (b) as to Paragraph IX(b) and Respondent SAXE under Section 10145 of the Code and Section 2831.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (c) as to Paragraph IX(c) and Respondent SAXE under Section 10145 of the Code and Section 2832 of the Regulations in conjunction with Section 10177(d) of the Code;
- (d) as to Paragraph IX(d) and Respondent SAXE under Section 10145 of the Code and Section 2832.1 of the Regulations in conjunction with Section 10177(d) of the Code;
- (e) as to Paragraph IX(e) and Respondent SAXE under Section 10159.5 of the Code and Section 2731 of the Regulations in conjunction with Section 10177(d) of the Code;
- (f) as to Paragraph IX(f) and Respondent SAXE under Section 2950 of the Regulations in conjunction with Section 10177(d) of the Code;
- (g) as to Paragraph IX(g) and Respondent SAXE under Section 10231 of the Code in conjunction with Section 10177(d) of the Code;
- (h) as to Paragraph IX(h) and Respondent SAXE under Section 10232.4 of the Code in conjunction with Section 10177(d) of the Code;


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- (i) as to Paragraph IX(i) and Respondent SAXE under Section 10231.2 of the Code in conjunction with Section 10177(d) of the Code;
- (j) as to Paragraph IX(j) and Respondent SAXE under Section 10238(h) (2) of the Code in conjunction with Section 10177(d) of the Code;
- (k) as to Paragraph IX(k) and Respondent SAXE under Sections 10238(k) (3) and 10238(j) (4) of the Code in conjunction with Section 10177(d) of the Code; and,
- (l) as to Paragraph X and Respondent DUNCAN under Section 10159.2 of the Code in conjunction with Sections 10177(g), 10177(h), and 10177(d) of the Code.

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 Respondents 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 applicable provisions of law.


E. J. HABERER II
Deputy Real Estate Commissioner

Dated at Oakland, California
this 25th day of July, 2007.