

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187007
3 Sacramento, CA 95818-7007
4 Telephone: (916) 227-0789

FILED

MAY 15 2008

DEPARTMENT OF REAL ESTATE

By D. Contreras

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

11 * * *

12 In the Matter of the Accusation of) NO. H-10221 SF
13)
14 DIVERSIFIED LOAN SERVICES, INC.,) STIPULATION AND AGREEMENT
15 a CORPORATION, and) IN SETTLEMENT
16 GERALD WILLIAM BREEDEN,) AND ORDER
17 Respondents.)

17 It is hereby stipulated by and between Respondents
18 DIVERSIFIED LOAN SERVICES, INC. (herein "DIVERSIFIED"), and
19 GERALD WILLIAM BREEDEN (herein "BREEDEN") (herein jointly
20 "Respondents"), by and through Laurence J. McEvoy, attorney of
21 record herein for Respondents, and the Complainant, acting by and
22 through Mary F. Clarke, Counsel for the Department of Real Estate
23 (herein "the Department"), as follows for the purpose of settling
24 and disposing of the Accusation filed on October 23, 2007, in
25 this matter (herein "the Accusation"):

26 1. All issues which were to be contested and all
27 evidence which was to be presented by Complainant and Respondents

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedure Act (APA), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation and Agreement in Settlement.

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

10 3. Notices of Defense were filed on October 26, 2007
11 and November 1, 2007, by Respondents pursuant to Section 11505 of
12 the Government Code for the purpose of requesting a hearing on
13 the allegations in the Accusation. Respondents hereby freely
14 and voluntarily withdraw said Notices of Defense. Respondents
15 acknowledge that they understand that by withdrawing said Notices
16 of Defense they will thereby waive their rights to require the
17 Commissioner to prove the allegations in the Accusation at a
18 contested hearing held in accordance with the provisions of the
19 APA and that they will waive other rights afforded to them in
20 connection with the hearing such as the right to present evidence
21 in defense of the allegations in the Accusation and the right to
22 cross-examine witnesses.

23 4. Respondents, pursuant to the limitations set forth
24 below, hereby admit that the factual allegations pertaining to
25 them in the Accusation filed in this proceeding are true and
26 correct and the Real Estate Commissioner shall not be required
27 to provide further evidence of such 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 Respondents' 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 Respondents 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. Respondents understand that by agreeing to this
20 Stipulation and Agreement, Respondents jointly and severally
21 agree to pay, pursuant to Section 10148 of the California
22 Business and Professions Code (herein "Code"), the cost of the
23 audit which resulted in the determination that Respondents
24 committed the trust fund violation(s) found in paragraph I,
25 below, of the Determination of Issues. The amount of said cost
26 is \$2,638.83. Respondents shall pay such cost within 60 days of
27 receiving an invoice from the Commissioner detailing the

1 activities performed during the audit and the amount of time
2 spent performing those activities.

3 8. Respondents further understand that by agreeing to
4 this Stipulation and Agreement in Settlement, the findings set
5 forth below in the Determination Of Issues become final, and
6 that the Commissioner may charge said Respondents, jointly and
7 severally, for the costs of any audit conducted pursuant to
8 Section 10148 of the Code to determine if the trust fund
9 violation(s) found in Paragraph I, below, of the Determination
10 of Issues have been corrected. The maximum costs of said audit
11 shall not exceed \$2,638.83. Respondents shall pay such cost
12 within 60 days of receiving an invoice from the Commissioner
13 detailing the activities performed during the audit and the
14 amount of time spent performing those activities.

15 DETERMINATION OF ISSUES

16 I

17 The acts and omissions of Respondents as described in
18 the Accusation are grounds for the suspension or revocation of
19 the licenses and license rights of Respondents under the
20 following provisions of the Code and/or Chapter 6, Title 10,
21 California Code of Regulations (herein "the Regulations"):

22 (a) as to Paragraph IX(a) and Respondent DIVERSIFIED
23 under Section 2726 of the Regulations in conjunction with
24 Section 10177(d) of the Code;

25 (b) as to Paragraph IX(b) and Respondent DIVERSIFIED
26 under Section 2834(a)(2) of the Regulations in conjunction with
27 Section 10177(d) of the Code; and,

1 (c) as to Paragraph X and Respondent BREEDEN under
2 Sections 10159.2, 10177(g), and 10177(h) of the Code in
3 conjunction with Section 10177(d) of the Code.

4 ORDER

5 I

6 A. All licenses and licensing rights of Respondent
7 DIVERSIFIED under the Real Estate Law are suspended for a period
8 of sixty (60) days from the effective date of this Order;
9 provided, however, that:

10 1. Said suspension shall be stayed for two (2)
11 years upon the following terms and conditions:

12 (a) Respondent shall obey all laws, rules and
13 regulations governing the rights, duties and responsibilities of
14 a real estate licensee in the State of California;

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

23 (c) Respondent shall timely submit quarterly,
24 annual, and any other required reports to the Department such
25 that no report is delinquent.

26 2. Respondents understand that by agreeing to
27 this Stipulation and Agreement, Respondents jointly and

1 severally agree to pay, pursuant to Section 10148 of the Code,
2 the cost of the audit which resulted in the determination that
3 Respondents committed the trust fund violation(s) found in
4 Paragraph I, above, of the Determination of Issues. The amount
5 of said cost is \$2,638.83. Respondents DIVERSIFIED and BREEDEN
6 shall pay such cost within 60 days of receiving an invoice from
7 the Commissioner. If Respondents fail to pay for the cost of
8 the audit within 60 days of mailing a notice of billing, the
9 Commissioner may suspend or revoke the broker's license or deny
10 renewal of the broker's license. The suspension or denial shall
11 remain in effect until the cost is paid or until the broker's
12 right to renew a license had expired.

13 3. Respondents further understand that by
14 agreeing to this Stipulation and Agreement in Settlement, the
15 findings set forth above in the Determination Of Issues become
16 final, and that the Commissioner may charge said Respondents,
17 jointly and severally, for the costs of any audit conducted
18 pursuant to Section 10148 of the Code to determine if the trust
19 fund violation(s) found in Paragraph I, above, of the
20 Determination of Issues have been corrected. The maximum costs
21 of said audit shall not exceed \$2,638.83. Respondents
22 DIVERSIFIED and BREEDEN shall pay such cost within 60 days of
23 receiving an invoice from the Commissioner. If Respondents fail
24 to pay for the cost of the audit within 60 days of mailing a
25 notice of billing, the Commissioner may suspend or revoke the
26 broker's license or deny renewal of the broker's license. The
27 suspension or denial shall remain in effect until the cost

1 is paid or until the broker's right to renew a license had
2 expired.

3 II

4 A. All licenses and licensing rights of Respondent
5 BREEDEN under the Real Estate Law are suspended until such time
6 as Respondent provides proof satisfactory to the Commissioner
7 that Respondent has, within one hundred twenty (120) days prior
8 to the effective date of the Decision herein completed the
9 continuing education course on trust fund accounting and handling
10 specified in subdivision (a) of Section 10170.5 of the Code.

11 B. All licenses and licensing rights of Respondent
12 BREEDEN under the Real Estate Law are suspended for a period of
13 sixty (60) days from the effective date of this Order; provided,
14 however, that:

15 1. Said suspension shall be stayed for two (2)
16 years upon the following terms and conditions:

17 (a) Respondent shall obey all laws, rules and
18 regulations governing the rights, duties and responsibilities of
19 a real estate licensee in the State of California;

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

1 (c) Respondent shall timely submit quarterly,
2 annual, and any other required reports to the Department such
3 that no report is delinquent.

4 2. Respondents understand that by agreeing to
5 this Stipulation and Agreement, Respondents jointly and
6 severally agree to pay, pursuant to Section 10148 of the Code,
7 the cost of the audit which resulted in the determination that
8 Respondents committed the trust fund violation(s) found in
9 Paragraph I, above, of the Determination of Issues. The amount
10 of said cost is \$2,638.83. Respondents BREEDEN and DIVERSIFIED
11 shall pay such cost within 60 days of receiving an invoice from
12 the Commissioner. If Respondents fail to pay for the cost of
13 the audit within 60 days of mailing a notice of billing, the
14 Commissioner may suspend or revoke the broker's license or deny
15 renewal of the broker's license. The suspension or denial shall
16 remain in effect until the cost is paid or until the broker's
17 right to renew a license had expired.

18 3. Respondents further understand that by
19 agreeing to this Stipulation and Agreement in Settlement, the
20 findings set forth above in the Determination Of Issues become
21 final, and that the Commissioner may charge said Respondents,
22 jointly and severally, for the costs of any audit conducted
23 pursuant to Section 10148 of the Code to determine if the trust
24 fund violation(s) found in Paragraph I, above, of the
25 Determination of Issues have been corrected. The maximum cost
26 of said audit shall not exceed \$2,638.83. Respondents BREEDEN
27 and DIVERSIFIED shall pay such cost within 60 days of receiving

1 an invoice from the Commissioner. If Respondents fail to pay
2 for the cost of the audit within 60 days of mailing a notice of
3 billing, the Commissioner may suspend or revoke the broker's
4 license or deny renewal of the broker's license. The suspension
5 or denial shall remain in effect until the cost is paid or until
6 the broker's right to renew a license had expired.

7
8 1-28-08

DATED

Mary F. Clarke
MARY F. CLARKE, Counsel
DEPARTMENT OF REAL ESTATE

9
10 * * *

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

22 DIVERSIFIED LOAN SERVICES, INC.
Respondent

23 2/6/08

DATED

24 By

Gerald W. Breeden

GERALD WILLIAM BREEDEN
Designated Officer - Broker

25
26 2/6/08

DATED

Gerald W. Breeden

GERALD WILLIAM BREEDEN
Respondent

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* * *

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

2/12/08

DATED



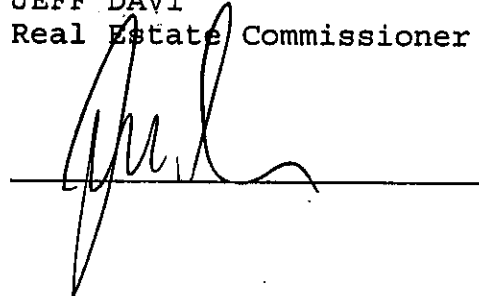
LAURENCE J. MCEVOY
Attorney for Respondent

* * *

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 June 4, 2008.

IT IS SO ORDERED 5-6, 2008.

JEFF DAVI
Real Estate Commissioner



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

5 Telephone: (916) 227-0789
6 -or- (916) 227-0780 (Direct)

FILED
OCT 23 2007

DEPARTMENT OF REAL ESTATE

By *K. Contreras*

7
8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12)
13 DIVERSIFIED LOAN SERVICES, INC.,)
14 A Corporation, and,)
15 GERALD WILLIAM BREEDEN,)
16 Respondents.)

NO. H-10221 SF

ACCUSATION

17 The Complainant, E. J. HABERER II, a Deputy Real Estate
18 Commissioner of the State of California, for cause of Accusation
19 against DIVERSIFIED LOAN SERVICES, INC., a Corporation (herein
20 "DIVERSIFIED") and GERALD WILLIAM BREEDEN (herein "BREEDEN"), is
21 informed and alleges as follows:

22 I

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

26 II

27 At all times herein mentioned, Respondents DIVERSIFIED
and BREEDEN (herein "Respondents") were and now are licensed
and/or have license rights under the Real Estate Law (Part 1 of

1 Division 4 of the Business and Professions Code) (herein "the
2 Code").

3 III

4 At all times herein mentioned DIVERSIFIED was and now
5 is licensed by the Department of Real Estate of the State of
6 California (herein "the Department") as a corporate real estate
7 broker by and through BREEDEN as designated officer-broker of
8 DIVERSIFIED to qualify said corporation and to act for said
9 corporation as a real estate broker.

10 IV

11 At all times herein mentioned, BREEDEN was and now is
12 licensed by the Department as a real estate broker, individually
13 and as designated officer-broker of DIVERSIFIED. As said
14 designated officer-broker, BREEDEN was at all times mentioned
15 herein responsible pursuant to Section 10159.2 of the Code for
16 the supervision of the activities of the officers, agents, real
17 estate licensees and employees of DIVERSIFIED for which a license
18 is required.

19 V

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

1 VI

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

12 VII

13 In so acting as real estate brokers, as described in
14 Paragraph VI above, Respondents accepted or received funds in
15 trust (herein "trust funds") from or on behalf of buyers,
16 borrowers, lenders and others in connection with the negotiating
17 and arranging of mortgage loans, as alleged herein, and
18 thereafter from time to time made disbursements of said funds.

19 VIII

20 The aforesaid trust funds accepted or received by
21 Respondents were deposited or caused to be deposited by
22 Respondents into one or more bank accounts (herein "trust fund
23 accounts") maintained by Respondents for the handling of trust
24 funds at the San Jose, California, branch of Heritage Bank of
25 Commerce, including but not necessarily limited to "DIVERSIFIED
26 LOAN SERVICES, INC. PAYMENT TRUST ACCOUNT", account number
27 1598648 (herein "Trust #1").

1 IX

2 Between on or about between January 1, 2006 and on or
3 about September 30, 2006, in connection with the collection and
4 disbursement of said trust funds, Respondent DIVERSIFIED:

5 (a) failed to enter into a written agreement with
6 Joseph Lopes Soares, a licensed broker/employee,
7 in violation of Section 2726 of the Regulations;
8 and,

9 (b) caused, suffered or permitted Joseph Lopes Soares
10 to make withdrawals from Trust #1 without having
11 first entered into a written agreement with
12 Respondent DIVERSIFIED, in violation of Section
13 2834(a)(2) of the Regulations.

14 X

15 At all times mentioned herein, Respondent BREEDEN
16 failed to exercise reasonable supervision over the acts of
17 Respondent DIVERSIFIED and their agents and employees in such a
18 manner as to allow the acts and omissions on the part of
19 DIVERSIFIED, 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
24 Regulations:

25 (a) as to Paragraph IX(a) and Respondent DIVERSIFIED under
26 Section 2726 of the Regulations in conjunction with
27 Section 10177(d) of the Code;

1 (b) as to Paragraph IX(b) and Respondent DIVERSIFIED under
2 Section 2834(a)(2) of the Regulations in conjunction
3 with Section 10177(d) of the Code; and,

4 (c) as to Paragraph X and Respondent BREEDEN under Section
5 10159.2 of the Code in conjunction with Sections
6 10177(g), 10177(h), and 10177(d) of the Code.

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

14
15
16
17 
18 _____
E. J. HABERER II
Deputy Real Estate Commissioner

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20 Dated at Oakland, California
21 this 25th day of September, 2007.
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27