

1 Department of Real Estate  
2 107 South Broadway, Room 8107  
3 Los Angeles, California 90012  
4 (213) 897-3937

**FILED**  
DEC 21 1994  
DEPARTMENT OF REAL ESTATE

By Laura B. Orona

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of ) No. H-25764 LA  
GREAT AMERICAN FUNDING CORP, a )  
Corporation, and STEVEN M. )  
MARCHE individually, and as )  
designated officer of Great )  
American Funding Corp. )  
Respondents. )

STIPULATION AND AGREEMENT IN SETTLEMENT AND ORDER

19 It is hereby stipulated by and between GREAT  
20 AMERICAN FUNDING CORP., and STEVEN M. MARCHE (hereinafter  
21 referred to as Respondents), acting by and through Rose  
22 Pothier, their attorney and the Complainant, acting by and  
23 through V. Ahda Sands, Counsel for the Department of Real  
24 Estate, as follows, for the purpose of settling and disposing  
25 of the Accusation filed on March 31, 1994, in this matter:

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

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

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

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

23           4. Respondents, pursuant to the limitations set  
24 forth below, hereby admit that the factual allegations of the  
25 Accusation filed in this proceeding are true and correct and  
26 the Real Estate Commissioner shall not be required to provide  
27 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 as  
3 his decision in this matter thereby imposing the penalty and  
4 sanctions on Respondents' real estate license and license  
5 rights as set forth in the below "Order". In the event that  
6 the Commissioner, in his discretion does not adopt the  
7 Stipulation and the Agreement, the Agreement shall be void and  
8 of no effect, and Respondents shall retain the right to a  
9 hearing and proceeding on the Accusation under all the  
10 provisions of the APA and shall not be bound by any admission  
11 or waiver made herein.

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

18                                   DETERMINATION OF ISSUES

19           By reason of the foregoing stipulations, admissions and  
20 waivers and solely for the purpose of settlement of the pending  
21 Accusation without a hearing, it is stipulated and agreed that  
22 the following determination of issues shall be made:

23                                   I

24           The conduct of Respondents, as described in the Accusation  
25 is in violation of Sections 10146 and 10176(e) of the Code and  
26 Sections 2831, 2831.1, 2831.2, 2832.1, 2951, 2970 of the  
27 Regulations cited in the Accusation, and is grounds for the

1 suspension or revocation of the real estate license and license  
2 rights of Respondents under the provisions of Sections 10177(d)  
3 and 10177(h) of the Business and Professions Code.

4 ORDER

5 1. The license and license rights of GREAT AMERICAN  
6 FUNDING CORP. under Part 1 of Division 4 of the Business and  
7 Professions Code are suspended for a period of sixty (60) days  
8 from the effective date of the Order.

9 2. However, if Respondent, GREAT AMERICAN FUNDING  
10 CORP., petitions, thirty (30) days of the suspension of  
11 Respondent's corporate broker license shall be permanently  
12 stayed if, prior to the effective date of the Decision herein,  
13 Respondent petitions pursuant to the Section 10175.2 of the  
14 Code and upon condition that Respondent pay to the Department's  
15 Real Estate Recovery Account the sum of one thousand five  
16 hundred dollars (\$1,500.00).

17 (a) Payment of the aforementioned monetary  
18 penalty shall be in the form of a cashiers check or certified  
19 check, made payable to the Recovery Account of the Real Estate  
20 Fund. Payment must be made prior to the effective date of this  
21 Decision.

22 (b) The Commissioner, in exercising his  
23 discretion under Code Section 10175.2, agrees by adopting this  
24 Order that it would not be against the public interest to  
25 permit such petitioning Respondent to pay the aforesaid  
26 monetary penalty.

27

1                   (c) If Respondent fails to pay the monetary  
2 penalty in accordance with the terms of this paragraph or  
3 Order, the Commissioner may, without a hearing, order the  
4 immediate execution of all or any part of the thirty day stay  
5 suspension, in which event the Respondent shall not be entitled  
6 to any repayment nor credit, prorated or otherwise, for money  
7 paid to the Department under the terms of this Order

8                   3. The final thirty (30) day portion of the  
9 suspension shall be stayed for two (2) years upon the following  
10 terms and conditions:

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

14                   (b) That no final subsequent determination be  
15 made, after hearing or upon stipulation, that cause for  
16 disciplinary action occurred within two (2) years of the  
17 effective date of this Order.

18                   (c) If Respondent (1) pays the monetary  
19 penalty as provided for herein, and (2) pays, within 45 days  
20 from receipt of the invoice referred to in Paragraph 4 below,  
21 the Commissioner's reasonable cost for an audit, and (3) if no  
22 further cause for disciplinary action against the real estate  
23 license of Respondent occurs within the two (2) years from the  
24 effective date of this Order, the thirty (30) day stay granted  
25 pursuant to this paragraph shall become permanent.

26                   (d) Pursuant to Code Section 10148, Respondent  
27 GREAT AMERICAN FUNDING CORP., shall pay the Commissioner's

1 reasonable cost for an audit as a result of the trust fund  
2 violations found in paragraph 1 of the Determination of Issues.  
3 In calculating the amount of the Commissioner's reasonable  
4 cost, the Commissioner may use the estimated average hourly  
5 salary for all persons performing audit of real estate brokers,  
6 and shall include an allocation for travel costs, including  
7 mileage, to and from the auditor's place of work, and per diem.  
8 The cost of said chargeable audit shall not exceed \$1,100.00.  
9 Respondent GREAT AMERICAN FUNDING CORP., shall pay such cost  
10 within 45 days of receiving an invoice from the Commissioner  
11 detailing the activities performed during the audit and the  
12 amount of time spent performing those activities.  
13 Notwithstanding the provisions of Paragraphs "1", "2" and "3"  
14 herein, if Respondent GREAT AMERICAN FUNDING CORP., fails to  
15 pay the reasonable costs for an audit to determine if  
16 Respondent has corrected the violations found in paragraph 1 of  
17 the Determination of Issues, the Commissioner may order the  
18 indefinite suspension of Respondent's real estate license and  
19 licensing rights. The suspension shall remain in effect until  
20 payment is made in full, or until the Respondent enters into an  
21 agreement satisfactory to the commissioner to provide for  
22 payment. The Commissioner may impose further reasonable  
23 disciplinary terms and conditions upon Respondent's real estate  
24 license and licensing rights as part of any such agreement.

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1  
2 1. The license and license rights of STEVEN M.  
3 MARCHE under Part 1 of Division 4 of the Business and  
4 Professions Code shall be suspended for a period of sixty (60)  
5 days from the effective date of the Order.

6 2. However, if Respondent, STEVEN M. MARCHE,  
7 petitions, thirty (30) days of the suspension of Respondent's  
8 individual broker license shall be permanently stayed if, prior  
9 to the effective date of the Decision herein, Respondent  
10 petitions pursuant to the Section 10175.2 of the Code and upon  
11 condition that Respondent pay to the Department's Real Estate  
12 Recovery Account the sum of one thousand five hundred dollars  
13 (\$1,500.00).

14 (a) Payment of the aforementioned monetary  
15 penalty shall be in the form of a cashiers check or certified  
16 check, made payable to the Recovery Account of the Real Estate  
17 Fund. Payment must be made prior to the effective date of this  
18 Decision.

19 (b) The Commissioner, in exercising his  
20 discretion under Code Section 10175.2, agrees by adopting this  
21 Order that it would not be against the public interest to  
22 permit such petitioning Respondent to pay the aforesaid  
23 monetary penalty.

24 3. If Respondent STEVEN M. MARCHE fails to pay the  
25 monetary penalty in accordance with the terms of this paragraph  
26 or Order, the Commissioner may, without a hearing, order the  
27 immediate execution of all or any part of the thirty day stay

1 suspension, in which event the Respondent shall not be entitled  
2 to any repayment nor credit, prorated or otherwise, for money  
3 paid to the Department under the terms of this Order.

4 4. The final thirty (30) day portion of the  
5 suspension shall be stayed for two (2) years upon the following  
6 terms and conditions:

7 (a) Respondent shall obey all laws of the  
8 United States, the State of California and all its political  
9 subdivisions and the rules and regulations governing the  
10 rights, duties, and responsibilities of a real estate licensee  
11 in the State of California.

12 (b) Respondent shall not engage in conduct that  
13 would be a cause for disciplinary action by the Department  
14 during the period of probation.

15 (c) If the Commissioner determines, after  
16 giving Respondent STEVEN M. MARCHE notice and an opportunity to  
17 be heard, that a violation of the conditions has occurred, the  
18 Commissioner may terminate the stay and impose the stayed  
19 portion or otherwise modify the Order. If Respondent STEVEN M.  
20 MARCHE successfully completes the terms and conditions of the  
21 probation, the stay shall be permanent.

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23 DATED:

Nov. 16, 1994

V. Ahda Sands

V. AHDA SANDS  
Counsel for Complainant

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We have read the Stipulation and Agreement, and its terms are understood by me and are agreeable and acceptable to me. We understand that we are waiving rights given to us by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and we 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 we would have the right to cross-examine witnesses against us and to present evidence in defense and mitigation of the charges.

GREAT AMERICAN FUNDING CORP.

DATED: 11-18-94

By [Signature]  
GREAT AMERICAN FUNDING CORP.  
Respondent, by Steven M. Marche  
Designated Officer

DATED: 11-18-94

[Signature]  
STEVEN M. MARCHE, Respondent

DATED: 11-21-94

[Signature]  
ROSE POTHIER, ESQUIRE  
ATTORNEY FOR RESPONDENTS

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The foregoing Stipulation and Agreement in Settlement and  
Order is hereby adopted by the Real Estate Commissioner as  
Decision and Order and shall become effective at 12 o'clock  
noon on January 10, 1995.

IT IS SO ORDERED December 15, 1994

JOHN R. LIBERATOR  
Interim Commissioner

John R. Liberator

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of )  
 )  
GREAT AMERICAN FUNDING CORP., )  
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 )  
Respondent. )

Case No. H-25764 LA  
OAH No. L-63240 DEPARTMENT OF REAL ESTATE

FILED  
APR 25 1994  
By Laura B. Orona

NOTICE OF HEARING ON ACCUSATION

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at Office of Administrative Hearings, 314 West First Street, Los Angeles, California, on NOVEMBER 29 & 30, 1994 at the hour of 9:00 a.m. or as soon thereafter as the matter can be heard, upon the Accusation served upon you.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter. The interpreter must be approved by the Administrative Law Judge conducting the hearing as someone who is proficient in both English and the language in which the witness will testify. You are required to pay the costs of the interpreter unless the Administrative Law Judge directs otherwise.

Dated: April 25, 1994

DEPARTMENT OF REAL ESTATE

By: V. Ahida Sands  
V. AHIDA SANDS, Counsel

cc: Great American Funding Corp.  
Steven M. Marche  
Sacto.  
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*Sachs*  
*2/20*

1 v. ANDA SANDS, Counsel  
2 Department of Real Estate  
3 107 South Broadway, Room 8107  
4 Los Angeles, California 90012  
5 (213) 897-3937

**FILED**  
MAR 31 1994  
DEPARTMENT OF REAL ESTATE

By *Laura B. Orone*

8 DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

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11	In the Matter of the Accusation of )	NO. H-25764 LA
12	GREAT AMERICAN FUNDING CORP., a )	
13	corporation, and STEVEN M. MARCHE, )	<u>A C C U S A T I O N</u>
14	individually and as Designated )	
15	Officer of Great American Funding )	
16	Corp., )	
	Respondents. )	

17 Complainant, Steven J. Ellis, a Deputy Real Estate  
18 Commissioner of the State of California, as and for cause of  
19 Accusation against GREAT AMERICAN FUNDING CORP., a corporation,  
20 and STEVEN M. MARCHE, individually and as Designated Officer of  
21 Great American Funding Corp. (herein "Respondents"), alleges as  
22 follows:

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24 The term "the Regulations" as used herein refers to  
25 provisions of Chapter 6, Title 10, California Code of Regulations.

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The Complainant, Steven J. Ellis, a Deputy Real Estate Commissioner of the State of California, makes this Accusation against Respondents in his official capacity.

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Respondents are presently 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").

4

At all times mentioned herein, Respondent GREAT AMERICAN FUNDING CORP. (herein "GAF"), a corporation, 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. At all times mentioned herein GAF was and now is licensed as a corporate real estate broker by and through STEVEN M. MARCHE (herein "MARCHE") as the officer and broker responsible pursuant to the provisions of Section 10159.2(a) of the Code for supervising the activities requiring a real estate license conducted on behalf of GAF by GAF's officers and employees.

5

At all times mentioned herein, Respondent MARCHE was and now is licensed by the Department as an individual real estate broker and as an officer of GAF.

6

All further references herein to "Respondents" include the parties identified in Paragraphs 4 and 5, above, and also include the officers, directors, employees, agents and real estate

1 licensees employed by or associated with said parties and who at  
2 all times herein mentioned were engaged in the furtherance of the  
3 business or operations of said parties and who were acting within  
4 the course and scope of their authority and employment.

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

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16 In connection with the aforesaid real estate brokerage  
17 activities, Respondents accepted or received funds in trust  
18 (hereinafter "trust funds") from or on behalf of borrowers and  
19 thereafter made disbursements of such funds. Respondents deposited  
20 certain of said funds into the following account (herein "said  
21 account"):

22 (a) Account No. [REDACTED] (hereinafter "Account #  
23 1"), the "Great American Funding Corporation Trust Account", at  
24 the Wells Fargo Bank, Calabasas branch, Calabasas, California;

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26 On March 9, 1993, the Department concluded its  
27 examination of Respondents' books and records pertaining to the

1 real estate brokerage activities described in Paragraph 7, above,  
2 for the five-month period ending January 29, 1993, which  
3 examination revealed violations of the Code and of the Regulations  
4 as set forth in the following paragraphs.

5 .10

6 In connection with the trust funds referred to in  
7 Paragraph 8, above, Respondents acted in violation of the Code and  
8 the Regulations in that Respondents:

9 (a) Violated Section 2832.1 of the Regulations by  
10 disbursing or causing or allowing the disbursement of trust funds  
11 from the Account # 1, wherein the disbursement of said funds  
12 reduced the funds in the said account to an amount which, on  
13 January 29, 1993, was approximately \$909.98 less than the existing  
14 aggregate trust fund liability to all owners of said funds,  
15 without first obtaining the prior written consent of every  
16 principal who was an owner of said funds.

17 (b) Commingled certain trust monies into their  
18 general account in violation of Section 10176(e) of the Code.

19 (c) Failed to deposit advance fees into a trust  
20 account in violation of Section 10146 of the Code.

21 (d) Failed to submit to the Commissioner for  
22 approval, all material used in soliciting and negotiating advance  
23 fees in violation of Section 2970 of the Regulations.

24 (e) Failed to submit a verified accounting to each  
25 principal for the disbursement of an advance fee in violation of  
26 Section 2972 of the Regulations and Section 10146 of the Code.

27

1 (f) Failed to maintain adequate formal trust fund  
2 receipts journal and a formal trust fund disbursements journal  
3 for the account identified in Paragraph 8, above, or other  
4 records of the receipt and disposition of all trust funds  
5 received, conforming to the requirements of Sections 2831 and  
6 2951 of the Regulations;

7 (g) Failed to maintain adequate separate records for  
8 each beneficiary or transaction, accounting therein for all  
9 trust funds received, deposited, and disbursed, conforming to  
10 the requirements of Sections 2831.1 and 2951 of the  
11 Regulations;

12 (h) Violated Section 2831.2 of the Regulations by  
13 failing to perform a monthly reconciliation of the records of  
14 the receipt and disposition of all trust funds received, and  
15 the balance of all separate beneficiary or transaction records;

16 11

17 The acts and omissions of Respondents described in  
18 Paragraph 10, above, violated the Code and the Regulations as set  
19 forth below:

20	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>	
21	10(a)	Sec. 2832.1	of the Regulations
	10(b)	Sec. 10176(e)	of the Code;
22	10(c)	Sec. 10146	of the Code;
	10(d)	Sec. 2970	of the Regulations.
23	10(e)	Sec. 2972	of the Regulations
		Sec. 10146	of the Code;
24	10(f)	Sec. 2831	of the Regulations;
		Sec. 2951	of the Regulations;
25	10(g)	Sec. 2831.1	of the Regulations;
		Sec. 2951	of the Regulations;
26	10(h)	Sec. 2831.2	of the Regulations

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