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FILED
APR 7 1999
DEPARTMENT OF REAL ESTATE

By *James B. Arma*

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DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-26241 LA
)	
TERRENCE JOHN O'SHAUGHNESSY)	
)	
Respondent.)	
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ORDER GRANTING REINSTATEMENT OF LICENSE

On June 17, 1996, a Decision and Order was rendered herein revoking the real estate broker license of Respondent, TERRENCE JOHN O'SHAUGHNESSY (hereinafter "Respondent"), effective July 10, 1996. In said Decision Respondent was given the right to apply for and receive a restricted real estate broker license which was issued to him on July 10, 1996.

On August 13, 1998, Respondent petitioned for reinstatement of said real estate broker license and the Attorney General of the State of California has been given notice of the filing of said petition.

I have considered Respondent's petition and the evidence and arguments in support thereof. Respondent has

1 demonstrated to my satisfaction that grounds do not presently
2 exist to deny the issuance of an unrestricted real estate
3 broker license to Respondent.

4 NOW, THEREFORE, IT IS ORDERED that Respondent's
5 petition for reinstatement is granted and that an
6 unrestricted real estate broker license be issued to
7 Respondent, TERRENCE JOHN O'SHAUGHNESSY, after Respondent
8 satisfies the following conditions within six months from the
9 date of this Order:

10 1. Submittal of a completed application and
11 payment of the fee for a real estate broker license.

12 2. Submittal of evidence satisfactory to the Real
13 Estate Commissioner that Respondent has, since his license
14 was revoked, taken and successfully completed the continuing
15 education requirements of Article 2.5 of Chapter 3 of the
16 Real Estate Law for renewal of a real estate license.

17 This Order shall become effective immediately.

18 DATED: March 17, 1999.

19 JOHN R. LIBERATOR
20 Acting Commissioner

21 *John R. Liberator*

22
23 TERRENCE JOHN O'SHAUGHNESSY
24 5158 Calvin Ave.
25 Tarzana, California 91356
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Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012
(213) 897-3937

FILED
JUN 20 1996
DEPARTMENT OF REAL ESTATE

By Laura B. Damer

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-26241 LA
)	
TITLE WEST MORTGAGE, INC., and)	<u>STIPULATION AND AGREEMENT</u>
TERRENCE JOHN O'SHAUGHNESSY,)	<u>IN SETTLEMENT AND ORDER</u>
)	
)	
Respondents.)	
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It is hereby stipulated by and between TITLE WEST MORTGAGE, INC. and TERRENCE JOHN O'SHAUGHNESSY (sometimes referred to as Respondents) and their attorney of record, Steve Gourley, representing the Respondents, and the Complainant, acting by and through James R. Peel, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on July 18, 1995, in this matter.

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

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

3 2. Respondents have received, read and understand 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. On July 24, 1995, Respondents filed a Notice of
8 Defense pursuant to Section 11505 of the Government Code for the
9 purpose of requesting a hearing on the allegations in the
10 Accusation. Respondents hereby freely and voluntarily withdraw
11 said Notice of Defense. Respondents acknowledge that they
12 understand that by withdrawing said Notice of Defense they will
13 thereby waive their right to require the Commissioner to prove
14 the allegations in the Accusation at a contested hearing held in
15 accordance with the provisions of the APA and that they will
16 waive other rights afforded to them in connection with the
17 hearing, such as the right to present evidence in defense of the
18 allegations in the Accusation and the right to cross-examine
19 witnesses.

20 4. Respondents, pursuant to the limitations set forth
21 below, although not admitting or denying the truth of the
22 allegations, will not contest the factual allegations contained
23 in the Accusation filed in this proceeding and the Real Estate
24 Commissioner shall not be required to provide further evidence
25 of such allegations.

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

1 Settlement as his decision in this matter thereby imposing the
2 penalty and sanctions on Respondents' real estate license and
3 license rights as set forth below in the "Order". In the event
4 that the Commissioner in his discretion does not adopt the
5 Stipulation and the Agreement in Settlement, it shall be void
6 and of no effect, and Respondents shall retain the right to a
7 hearing and proceeding on the Accusation under the provisions of
8 the APA and shall not be bound by any stipulation 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 in Settlement shall not constitute an estoppel, merger
13 or bar to any further administrative or civil proceedings by the
14 Department of Real Estate with respect to any matters which were
15 not specifically alleged to be causes for accusation in this
16 proceeding, but shall constitute a bar, estoppel and merger as
17 to any allegations actually contained in the accusations against
18 Respondents herein.

19 7. This Stipulation is entered into by each party
20 with the express understanding and agreement that it is to be
21 used for the purposes of settling these proceedings only and
22 that this Stipulation shall not be deemed, used, or accepted as
23 an acknowledgment or stipulation in any other civil or
24 administrative proceeding to which this Department is not a
25 party. Said stipulation is expressly limited to these
26 proceedings and to any further proceeding initiated by or
27 brought before the Department of Real Estate, and shall have no

1 collateral estoppel or res judicata effect in any proceeding
2 other than a proceeding brought by the Department of Real
3 Estate.

4 8. That this Stipulation contains the full and
5 complete agreement of the parties hereto with regard to the
6 disposition of these administrative proceedings, only, and that
7 this Stipulation supersedes in their entirety all negotiations,
8 discussions, agreements, and/or proposals which may have been
9 issued or made by the respective parties and/or by attorneys for
10 the respective parties prior to the date of execution of this
11 Stipulation.

12 DETERMINATION OF ISSUES

13 By reason of the foregoing stipulations and waivers
14 and solely for the purpose of settlement of the pending
15 Accusation without a hearing, it is stipulated and agreed that
16 the following determination of issues shall be made:

17 I

18 The conduct of Respondents, TITLE WEST MORTGAGE, INC.
19 and TERRENCE JOHN O'SHAUGHNESSY, as alleged in the Accusation,
20 is grounds for the suspension or revocation of all of the real
21 estate licenses and license rights of Respondents under the
22 provisions of Regulations 2832.1, 2831, 2831.1 and 2831.2, and
23 Sections 10145(a), 10176(e), 10240, 10177(d), and 10177 (h) of
24 the Business and Professions Code.

25 ORDER

26 1. All licenses and license rights of Respondents
27 TITLE WEST MORTGAGE, INC. and TERRENCE JOHN O'SHAUGHNESSY under

1 Part 1 of Division 4 of the Business and Professions Code are
2 revoked; provided, however, a restricted real estate broker
3 license shall be issued to Respondents, or either of them,
4 pursuant to Section 10156.5 of the Code if Respondents make
5 application therefor, and pay to the Department of Real Estate
6 the appropriate fee for said license within (90) days from the
7 effective date of the Decision.

8 A. The restricted license issued to Respondents
9 TITLE WEST MORTGAGE, INC. and TERRENCE JOHN O'SHAUGHNESSY shall
10 be subject to all of the provisions of Section 10156.7 of the
11 Business and Professions Code and to the following limitations,
12 conditions, and restrictions imposed under authority of Section
13 10156.6 of said Code;

14 (1) The restricted license of TITLE WEST MORTGAGE,
15 INC. and TERRENCE JOHN O'SHAUGHNESSY may be suspended, pending
16 final determination made after formal hearing, by Order of the
17 Real Estate Commissioner in the event of Respondent's conviction
18 or plea of nolo contendere to a crime which bears a significant
19 relationship to Respondent's fitness or capacity as a real
20 estate licensee.

21 (2) The restricted license of TITLE WEST MORTGAGE,
22 INC. and TERRENCE JOHN O'SHAUGHNESSY may be suspended, pending
23 final determination made after formal hearing, by Order of the
24 Real Estate Commissioner on evidence satisfactory to the
25 Commissioner that Respondent has during the time it holds a
26 restricted license, violated provisions of the California Real
27 Estate Law, the Subdivided Lands Law, Regulations of the Real

1 Estate Commissioner, or the conditions attaching to this
2 restricted license.

3 (3) Respondents TITLE WEST MORTGAGE, INC. and
4 TERRENCE JOHN O'SHAUGHNESSY shall not be eligible to apply for
5 the issuance of an unrestricted real estate license nor the
6 removal of any of the conditions, limitations or restrictions of
7 a restricted license until one (1) year has elapsed from the
8 date of issuance of the restricted license to Respondent.

9 (4) Respondents TITLE WEST MORTGAGE, INC. and
10 TERRENCE JOHN O'SHAUGHNESSY shall report in writing to the
11 Department of Real Estate as the Real Estate Commissioner shall
12 direct by his Order herein or by separate written order issued
13 while Respondent holds a restricted license, such information
14 concerning Respondent's activities for which a real estate
15 license is required as the Commissioner shall deem to be
16 appropriate to protect the public interest.

17 (5) Within two years from the effective date of this
18 Order, the Commissioner may audit the books and records of
19 respondent TITLE WEST MORTGAGE, INC. to determine compliance
20 with the Real Estate Law and Regulations of the Real Estate
21 Commissioner, pursuant to Code Section 10148.

22 (a) The Real Estate Commissioner may charge
23 respondent TITLE WEST MORTGAGE, INC. the reasonable cost of this
24 audit. In calculating the amount of the reasonable costs, the
25 Commissioner may use the estimated average hourly salary for all
26 persons performing audits of real estate brokers, and shall
27 include an allocation for travel costs, including mileage, time

1 to and from the auditor's place of work, and per diem. The
2 Commissioner's reasonable costs shall in no event exceed
3 \$10,000.

4 (b) Respondent shall pay, within 45 days from
5 receipt of the invoice, the Commissioner's reasonable costs for
6 the chargeable follow-up audit.

7 (c) If Respondent TITLE WEST MORTGAGE, INC.
8 fails to pay, within 45 days from receipt of the invoice, for
9 the Commissioner's reasonable costs for an audit, the
10 Commissioner may order the indefinite suspension of Respondent's
11 real estate license and license rights. The suspension shall
12 remain in effect until payment is made in full, or until
13 Respondent enters into an agreement satisfactory to the
14 Commissioner to provide for such payment. The Commissioner may
15 impose further reasonable disciplinary terms and conditions upon
16 Respondent's real estate license and license rights as part of
17 any such agreement.

18 (6) Respondent TERRENCE JOHN O'SHAUGHNESSY shall,
19 within twelve months from the effective date of this Decision,
20 present evidence satisfactory to the Real Estate Commissioner
21 that Respondent has since the most recent issuance of an
22 original or renewal real estate license, taken and successfully
23 completed the continuing education requirements of Article 2.5
24 of Chapter 3 of the Real Estate Law for renewal of a real estate
25 license, including 3 hour courses in ethics, agency, fair
26 housing and trust fund handling. If respondent fails to satisfy
27 this condition, the Commissioner may order the suspension of the

1 restricted license until the Respondent presents such evidence.
2 The Commissioner shall afford Respondent the opportunity for a
3 hearing pursuant to the Administrative Procedure Act to present
4 such evidence.

5 (7) Respondent TERRENCE JOHN O'SHAUGHNESSY shall,
6 within six months from the effective date of this Decision, take
7 and pass the Professional Responsibility Examination
8 administered by the Department including the payment of the
9 appropriate examination fee. If Respondent fails to satisfy
10 this condition, the Commissioner may order suspension of
11 Respondent's license until Respondent passes the examination.
12

13
14
15 DATED:

JUNE 12, 1996

James R. Peel
JAMES R. PEEL
Counsel for Complainant

16
17 * * * *

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

DATED: 6/5/96

TITLE WEST MORTGAGE, INC.
Respondent

DATED: 6/5/96

TERRENCE JOHN O' SHAUGHNESSY
Respondent

DATED: May 31, 1996

STEVE GOURLEY
Counsel for Respondents

* * * *

The foregoing Stipulation and Agreement in Settlement
is hereby adopted as my Order and shall become effective at
12 o' clock noon on July 10, 1996.

IT IS SO ORDERED 6-17, 1996.

JIM ANTT, JR.
Real Estate Commissioner

[Signature]

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILED
JAN 12 1996
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of) Case No. 26241 LA
TITLE WEST MORTGAGE, INC., et al.,) OAH No. L-9510143
Respondents.)

By Jana B. Erone

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, MAY 30, 1996, 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: January 12, 1996

DEPARTMENT OF REAL ESTATE

By: James R. Peel
JAMES R. PEEL, Counsel

cc: Title West Mortgage, Inc.
Terrence Joh O'Shaughnessy
Steve Gourley, Esq.
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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * * * *

FILE
DEC - 6 1995
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of) Case No. H-26241 LA
) OAH No. L-9510143
TITLE WEST MORTGAGE, INC., and)
TERRENCE JOHN O' SHAUGHNESSY,)
)
Respondents.)

By Laura B. Olson

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, JANUARY 3, 1996 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: December 6, 1995

DEPARTMENT OF REAL ESTATE

By: James R. Peel
JAMES R. PEEL, Counsel

cc: Title West Mortgage Inc.
Terrence John O'Shaughnessy
Steve Gourley, Esq.
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JAMES R. PEEL, Counsel
Department of Real Estate
107 South Broadway, Room 8107
Los Angeles, CA 90012
(213) 897-3937

FILED
JUL 18 1995
DEPARTMENT OF REAL ESTATE

By *Jane B. Crow*

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of)	NO. H-26241 LA
TITLE WEST MORTGAGE, INC., and)	A C C U S A T I O N
TERRENCE JOHN O'SHAUGHNESSY,)	
)	
)	
)	
Respondents.)	

The Complainant, Peter F. Hurst, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against TITLE WEST MORTGAGE INC., and TERRENCE JOHN O'SHAUGHNESSY, alleges as follows:

I

The Complainant, Peter F. Hurst, a Deputy Real Estate Commissioner of the State of California makes this Accusation in his official capacity.

II

TITLE WEST MORTGAGE, INC. and TERRENCE JOHN O'SHAUGHNESSY (hereinafter referred to as respondents) are

1 presently licensed and/or have license rights under the Real
2 Estate Law, (Part 1 of Division 4 of the Business and Professions
3 Code, hereinafter referred to as the "Code").

4 III

5 At all times herein mentioned, respondent TITLE WEST
6 MORTGAGE, INC. was licensed by the Department of Real Estate as a
7 corporate real estate broker, and respondent TERRENCE JOHN
8 O'SHAUGHNESSY was licensed as the designated broker officer of
9 said corporation, and ordered, authorized or participated in the
10 illegal conduct of respondent TITLE WEST MORTGAGE, INC., as
11 alleged in this Accusation.

12 IV

13 At all times herein mentioned, respondent TITLE WEST
14 MORTGAGE, INC. on behalf of others in expectation of compensation,
15 engaged in the business of, acted in the capacity of, advertised
16 or assumed to act as a real estate broker in the State of
17 California within the meaning of Section 10131(d) of the Code,
18 including soliciting borrowers and lenders and negotiating loans
19 secured directly by liens on real property.

20 V

21 During 1994, in connection with the aforesaid real
22 estate brokerage activities, respondent TITLE WEST MORTGAGE, INC.,
23 accepted or received funds from borrowers and lenders and
24 thereafter made disbursements of such funds.

25 VI

26 In connection with respondents' activities as a real
27 estate broker as described above, respondents acted in violation



1 of the Real Estate Law, Business and Professions Code (hereinafter
2 Code), and California Code of Regulations (hereinafter
3 Regulations), Title 10, Chapter 6, as follows:

4 1. TITLE WEST MORTGAGE, INC. violated Section 10145(a)
5 of the Code and Regulation 2832.1 by maintaining a shortage in
6 Trust Account 001-064517 ("T/A 1") of \$116,126.33 as of November
7 30, 1994, and a shortage in Trust Account 001-020129 ("T/A 2") of
8 \$1,894.50 as of November 30, 1994.

9 2. TITLE WEST MORTGAGE, INC. violated Sections 10146 and
10 10176(e) of the Code by commingling advance fees collected from
11 borrowers into general account 001-020110. During November 1994
12 \$38,276.75 received from borrowers for advance fees was deposited
13 into the general account.

14 3. TITLE WEST MORTGAGE, INC. violated Section 10148 of
15 the Code by failing to keep and maintain copies of all transaction
16 files including escrow documents for review and examination by
17 employees of the Department of Real Estate.

18 4. TITLE WEST MORTGAGE, INC. violated Regulation 2831
19 in that the control record for T/A 1 was missing the date the
20 funds were received, a daily balance was not always maintained and
21 the daily balance was not accurate, and the control record for T/A
22 2 sometimes showed inaccurate check numbers and daily balances.

23 5. TITLE WEST MORTGAGE, INC. violated Regulation 2831.1
24 in that the separate records for T/A 1 were at times missing the
25 date of the checks and deposits, check numbers, and daily
26 balances. Receipts and disbursements were not always in
27 chronological order which made the daily balance inaccurate. The



1 separate records for T/A 2 sometimes showed inaccurate check
2 numbers and daily balances, failed to reflect the total loan
3 payment received and recorded only one lender's portion of the
4 loan payment.

5 6. TITLE WEST MORTGAGE, INC. violated Regulation 2831.2
6 by not maintaining a monthly record of trust fund account
7 reconciliation. The columnar record was not reconciled to the
8 separate or subsidiary records for T/A 1 and T/A 2.

9 7. TITLE WEST MORTGAGE, INC. violated Regulation 2834
10 by allowing non-licensees Sylvia O'Shaughnessy to sign trust
11 account checks on T/A 1 and T/A 2 without being properly bonded.

12 8. TERRENCE JOHN O'SHAUGHNESSY violated Regulation 2725
13 by not reviewing, initialing, and dating documents contained in
14 the loan files (including escrow instructions and closing
15 statements) prepared by real estate licensees and employees in the
16 employment of TITLE WEST MORTGAGE, INC.

17 9. TITLE WEST MORTGAGE, INC. violated Section 10240 of
18 the Code by failing to provide borrowers Bergstrom, Buffington,
19 Elomina, Prybyla and Doyle with the required Mortgage Loan
20 Disclosure Statement and borrowers Durst, Douglas, Hill, Sloan and
21 Henry did not receive their disclosure statement within three days
22 of signing the loan application, and their disclosure statement
23 was not dated and signed by the broker or the salesperson who
24 negotiated the loan.

25 10. TITLE WEST MORTGAGE, INC. violated Section 10146 of
26 the Code by failing to provide borrowers Pixley, Graves, Tognetti,

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and Kosner with a verified accounting of how their advance fees were used.

11. TITLE WEST MORTGAGE, INC. violated Section 10161.8 of the Code by failing to notify the Department of Real Estate within five days when salespersons entered or left its employ.

VII

The conduct of respondent TITLE WEST MORTGAGE, INC., as alleged above, subjects its real estate license and license rights to suspension or revocation pursuant to Section 10177(d) and 10177(g) of the Code.

VIII

The conduct of respondent TERRENCE JOHN O'SHAUGHNESSY, as alleged above, as the responsible individual, by allowing and permitting TITLE WEST MORTGAGE, INC. to engage in the conduct specified in Paragraph VI above, subjects his real estate licenses and license rights to suspension or revocation pursuant to Sections 10177(d) and 10177(h) of the Code.

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