

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Department of Real Estate  
107 South Broadway, Room 8107  
Los Angeles, CA 90012  
(213) 897-3937

**FILED**  
MAR 21 1996  
DEPARTMENT OF REAL ESTATE

By K. Niedbold

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of	)	NO. H-26262 LA
SCHAEFER FINANCIAL SERVICES	)	<u>STIPULATION AND AGREEMENT</u>
and BABAK SIMINOU,	)	<u>IN SETTLEMENT AND ORDER</u>
	)	
	)	
Respondents.	)	

It is hereby stipulated by and between SCHAEFER FINANCIAL SERVICES and BABAK SIMINOU (sometimes referred to as Respondents) and their attorney of record, H. Sean Dayani, 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 27, 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 August 11, 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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Settlement as his decision in this matter thereby imposing the penalty and sanctions on Respondents' real estate license and license rights as set forth below in the "Order". In the event that the Commissioner in his discretion does not adopt the Stipulation and the Agreement in Settlement, it shall be void and of no effect, and Respondents shall retain the right to a hearing and proceeding on the Accusation under the provisions of the APA and shall not be bound by any admission or waiver made herein.

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

7. This Stipulation is entered into by each party with the express understanding and agreement that it is to be used for the purposes of settling these proceedings only and that this Stipulation shall not be deemed, used, or accepted as an acknowledgment or stipulation in any other civil or administrative proceeding to which this Department is not a party.

DETERMINATION OF ISSUES

By reason of the foregoing stipulations and waivers and solely for the purpose of settlement of the pending

1 Accusation without a hearing, it is stipulated and agreed that  
2 the following determination of issues shall be made:

3 I

4 The conduct of Respondents, SCHAEFER FINANCIAL  
5 SERVICES and BABAK SIMINOU, as alleged in the Accusation, is  
6 grounds for the suspension or revocation of all of the real  
7 estate licenses and license rights of Respondents under the  
8 provisions of Regulations 2831 and 2831.1, and Sections 10177(d)  
9 and 10177(h) of the Business and Professions Code.

10 ORDER

11 All licenses and licensing rights of Respondent  
12 SCHAEFER FINANCIAL SERVICES and Respondent BABAK SIMINOU under  
13 the Real Estate Law are suspended for a period of 120 days from  
14 the effective date of this Order, provided as follows:

15 1. Sixty (60) days of said suspension shall be  
16 stayed for two (2) years on condition of the following:

- 17 (a) That Respondents shall obey all laws,  
18 rules and regulations governing the  
19 rights, duties and responsibilities of a  
20 real estate licensee in the State of  
21 California.
- 22 (b) That no final subsequent determination  
23 be made by the Real Estate Commissioner  
24 after hearing or upon stipulation that  
25 cause for disciplinary action against the  
26 real estate license of either Respondent  
27 has occurred within two (2) years of the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

effective date of this Order.

(c) That pursuant to Section 10148 of the Business and Professions Code, Respondent SCHAEFER FINANCIAL SERVICES shall pay the Commissioner's reasonable cost for an audit to determine if Respondent SCHAEFER FINANCIAL SERVICES has corrected the trust fund violations alleged in Paragraph VI of the Accusation. In calculating the amount of the Commissioner's reasonable costs, the Commissioner may use the estimated average hourly salary for all Department Audit Section personnel performing audits of real estate brokers, and shall include an allocation for travel costs, including mileage, time to and from the auditor's place of work, and per diem. The Commissioner's reasonable costs shall in no event exceed \$1,300. Payment shall be made within 45 days from receipt of an invoice from the Commissioner.

(d) That if, after two years from the effective date of this Order, each of the conditions referred to in this paragraph "1" are complied with, the stay granted pursuant to this paragraph shall become permanent. It shall be deemed cause to vacate the stay

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

if Respondent SCHAEFER FINANCIAL SERVICES  
does not pay within 45 days from receipt of  
an invoice from the Commissioner the  
Commissioner's reasonable costs for an  
audit as provided in subparagraph (c).

(e) Notwithstanding any of the above provisions  
of this paragraph "1", if Respondent  
SCHAEFER FINANCIAL SERVICES fails to pay,  
within 45 days from receipt of the invoice  
specified above, the cost of the audit,  
the Commissioner may order the indefinite  
suspension of Respondent SCHAEFER FINANCIAL  
SERVICE'S real estate license and  
license rights. The suspension shall  
remain in effect until payment is made in  
full, or until Respondent SCHAEFER  
FINANCIAL SERVICES enters into an agreement  
satisfactory to the Commissioner to provide  
for such payment. The Commissioner may  
impose further reasonable disciplinary  
terms and conditions upon Respondent  
SCHAEFER FINANCIAL SERVICES' real  
estate license and license rights as part  
of any such agreement.

(2) Provided further, that the remaining sixty (60)  
days of said 120 day suspension shall be stayed on condition of  
the following:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

(a) That Respondents or either of them pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code in the amount of \$1,000 for each Respondent.

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

DATED: 3-8-96

James R. Peel  
JAMES R. PEEL  
Counsel for Complainant

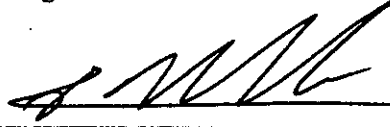
\* \* \* \*

I have read the Stipulation and Agreement in Settlement, 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


/  
/  
/  
/  
/  
/  
/  
/

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

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.

DATED: Feb 17 96   
SCHAEFER FINANCIAL SERVICES  
Respondent

DATED: 1-22-96   
BABAK SIMINOU  
Respondent

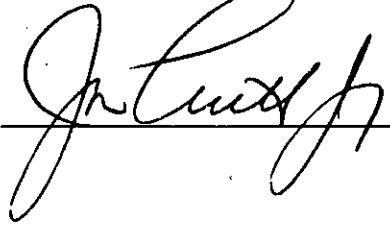
DATED: Feb 6, 96   
H. SEAN DAYANI  
Counsel for Respondents

\* \* \* \*

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

IT IS SO ORDERED 3/18, 1996.

JIM ANTT, JR.  
Real Estate Commissioner



lbo



*File*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

JAMES R. PEEL, Counsel  
Department of Real Estate  
107 South Broadway, Room 8107  
Los Angeles, CA 90012  
(213) 897-3937

**FILED**  
JUL 27 1995  
DEPARTMENT OF REAL ESTATE

By Laure B. Orma

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of )	NO. H-26262 LA
SCHAEFER FINANCIAL SERVICES )	A C C U S A T I O N
and BABAK SIMINOU, )	
)	
)	
)	
Respondents. )	

The Complainant, Peter F. Hurst, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against SCHAEFER FINANCIAL SERVICES, and BABAK SIMINOU, 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

SCHAEFER FINANCIAL SERVICES and BABAK SIMINOU (hereinafter referred to as respondents) are presently licensed

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

4 III

5 At all times herein mentioned, respondent SCHAEFER  
6 FINANCIAL SERVICES was licensed by the Department of Real Estate  
7 as a corporate real estate broker, and respondent BABAK SIMINOU  
8 was licensed as the designated broker officer of said corporation,  
9 and ordered, authorized or participated in the illegal conduct of  
10 respondent SCHAEFER FINANCIAL SERVICES, as alleged in this  
11 Accusation.

12 IV

13 At all times herein mentioned, SCHAEFER FINANCIAL  
14 SERVICES 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 on real property.

20 V

21 During 1992 through 1994, in connection with the  
22 aforesaid real estate brokerage activities, respondent SCHAEFER  
23 FINANCIAL SERVICES, accepted or received funds from borrowers and  
24 lenders and 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. SCHAEFER FINANCIAL SERVICES violated Section 10148  
5 of the Code by failing to keep and maintain the Valle Loan file  
6 for three years for inspection and examination by employees of the  
7 Department of Real Estate.

8 2. SCHAEFER FINANCIAL SERVICES violated Regulation 2831  
9 in that the trust account control record failed to identify the  
10 checks written with the borrower and loan, the daily balance was  
11 not accurate, and the date the funds were received was missing.

12 3. SCHAEFER FINANCIAL SERVICES violated Regulation  
13 2831.1 in that the separate records did not show a daily balance  
14 for the credit report fee separate records, and there were no  
15 separate records for the loan servicing activities.

16 4. SCHAEFER FINANCIAL SERVICES violated Regulation  
17 2831.2 by not maintaining a monthly record of trust account  
18 reconciliation. The columnar record was not reconciled to the  
19 separate or subsidiary records.

20 5. SCHAEFER FINANCIAL SERVICES violated Regulation 2834  
21 by allowing Joseph Shayfar to sign checks written on the trust  
22 account when he was not licensed to SCHAEFER FINANCIAL SERVICES as  
23 a real estate salesperson.

24 6. SCHAEFER FINANCIAL SERVICES violated Regulation 2833  
25 by failing to maintain separate records for the \$2,630.73  
26 unidentified overage in the trust account as of September 7, 1994,  
27



1 including a separate subsidiary ledger to record the potential  
2 trust fund liability.

3 7. SCHAEFER FINANCIAL SERVICES violated Section 10232.4  
4 of the Code by failing to furnish lenders Houghton, Otero and  
5 Shophit with the required completed disclosure statement.

6 8. SCHAEFER FINANCIAL SERVICES violated Section 10234  
7 of the Code by failing to record the deed of trust for the Otero  
8 loan naming as beneficiary the lender, James Potter, but was  
9 recorded instead in SCHAEFER FINANCIAL SERVICES' name.

10 9. SCHAEFER FINANCIAL SERVICES violated Section 10240  
11 of the Code in that the Mortgage Loan Disclosure Statements for  
12 borrowers Senemar, Okhovat, Casacky, Farina, and Hartsuiker were  
13 not signed by the borrowers within three days of the signing of  
14 the loan application by the borrowers and the disclosure  
15 statements for borrowers Houghton, Otero and Shophit were not  
16 signed by broker BABAK SIMIOU or the real estate salesperson who  
17 negotiated the loan.

18 10. BABAK SIMINOU violated Regulation 2725 by not  
19 reviewing, initialing, and dating documents contained in the loan  
20 files (including loan applications and disclosure statements)  
21 prepared by real estate licensees in the employment of SCHAEFER  
22 FINANCIAL SERVICES. Examples are the files for borrowers  
23 Houghton, Otero and Shophit.

24 11. SCHAEFER FINANCIAL SERVICES violated Regulation  
25 2710(c) by failing to notify the Department of Real Estate within  
26 five days after the effective date of the change when salespersons  
27 entered or left the employ of SCHAEFER FINANCIAL SERVICES.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

VII

The conduct of respondent SCHAEFER FINANCIAL SERVICES, 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 BABAK SIMINOU, as alleged above, as the responsible individual, by allowing and permitting SCHAEFER FINANCIAL SERVICES 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.

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 SCHAEFER FINANCIAL SERVICES and BABAK SIMINOU 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.

Dated at Los Angeles, California  
this 27th day of July, 1995.

PETER F. HURST

Deputy Real Estate Commissioner

cc: Schaefer Financial Services  
Babak Siminou  
Sacto.  
CL  
lbo