

1 Department of Real Estate  
2 State Bar No. 66674  
3 107 South Broadway, Room 8107  
4 Los Angeles, California 90012  
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**FILED**  
MAY 22 1998  
DEPARTMENT OF REAL ESTATE

By *Glenn B. Adams*

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of )  
CSMC CORPORATION; )  
and JAMES DAVID NAYLOR, )  
individually and as )  
designated officer of, )  
CSMC Corporation, )  
Respondents. )

NO. H-27516 LA  
STIPULATION AND AGREEMENT

It is hereby stipulated by and between CSMC CORPORATION  
and JAMES DAVID NAYLOR individually and as designated officer of  
CSMC Corporation, (sometimes collectively referred to as  
Respondents), and the Complainant, acting by and through Elliott  
Mac Lennan, Counsel for the Department of Real Estate, as follows  
for the purpose of settling and disposing of the Accusation filed  
on January 14, 1998, in this matter:

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/

1           1. All issues which were to be contested and all  
2 evidence which was to be presented by Complainant and Respondents  
3 at a formal hearing on the Accusation, which hearing was to be  
4 held in accordance with the provisions of the Administrative  
5 Procedure Act (APA), shall instead and in place thereof be  
6 submitted solely on the basis of the provisions of this  
7 Stipulation and Agreement (Stipulation).

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

12           3. Respondents filed a Notice of Defense pursuant to  
13 Section 11506 of the Government Code for the purpose of requesting  
14 a hearing on the allegations in the Accusation. Respondents  
15 hereby freely and voluntarily withdraw said Notice of Defense.  
16 Respondents acknowledge that they understand that by withdrawing  
17 said Notice of Defense they thereby waive their right to require  
18 the Commissioner to prove the allegations in the Accusation at a  
19 contested hearing held in accordance with the provisions of the  
20 APA and that they will waive other rights afforded to them in  
21 connection with the hearing such as the right to present evidence  
22 in their defense the right to cross-examine witnesses.

23           4. This Stipulation is based on the factual allegations  
24 contained in the Accusation. In the interest of expedience and  
25 economy, Respondents choose not to contest these allegations, but  
26 to remain silent and understand that, as a result thereof, these  
27 factual allegations, without being admitted or denied, will serve

1 as a prima facie basis for the disciplinary action stipulated to  
2 herein. The Real Estate Commissioner shall not be required to  
3 provide further evidence to prove said factual allegations.

4 5. This Stipulation is based on Respondents' decision  
5 not to contest the allegations set forth in the Accusation as a  
6 result of the agreement negotiated between the parties. This  
7 Stipulation is expressly limited to this proceeding and any  
8 further proceeding initiated by or brought before the Department  
9 of Real Estate based upon the facts and circumstances alleged in  
10 the Accusation for the sole purpose of reaching an agreed  
11 disposition of this proceeding without a hearing. The decision of  
12 Respondents not to contest the allegations is made solely for the  
13 purpose of effectuating this Stipulation. It is the intent and  
14 understanding of the parties that this Stipulation shall not be  
15 binding or admissible against Respondents in any actions against  
16 Respondents by third parties.

17 6. It is understood by the parties that the Real Estate  
18 Commissioner may adopt this Stipulation as his Decision in this  
19 matter thereby imposing the penalty and sanctions on Respondents'  
20 real estate licenses and license rights as set forth in the  
21 "Order" herein below. In the event that the Commissioner in his  
22 discretion does not adopt the Stipulation, it shall be void and of  
23 no effect and Respondents shall retain the right to a hearing and  
24 proceeding on the Accusation under the provisions of the APA and  
25 shall not be bound by any stipulation or waiver made herein.

26 7. The Order or any subsequent Order of the Real Estate  
27 Commissioner made pursuant to this Stipulation shall not



1 constitute an estoppel, merger or bar to any further  
2 administrative or civil proceedings by the Department of Real  
3 Estate with respect to any matters which were not specifically  
4 alleged to be causes for accusation in this proceeding.

5  
6 DETERMINATION OF ISSUES

7 By reason of the foregoing stipulations, it is  
8 stipulated and agreed that the following determination of issues  
9 shall be made:

10 I

11 The conduct of Respondent CSMC CORPORATION, as described  
12 in Paragraph 4, is in violation of Section 10145 of the Business  
13 and Professions Code (Code) and Sections 2832.1, 2831.1 and 2831.2  
14 of Title 10, Chapter 6 of the California Code of Regulations  
15 (Regulations) and is a basis for the suspension or revocation of  
16 Respondent's license and license rights as a violation of the Real  
17 Estate Law pursuant to Section 10177(d) of the Code.

18 II

19 The conduct of JAMES DAVID NAYLOR, as described in  
20 Paragraph 4, constitutes a failure to keep CSMC CORPORATION in  
21 compliance with the Real Estate Law during the time that he was  
22 the officer designated by a corporate broker licensee and further  
23 constitutes a failure to exercise reasonable supervision and  
24 control over the licensed activities of CSMC CORPORATION and its  
25 salespersons which require a real estate license. This conduct is  
26 a basis for the suspension or revocation of Respondent's license  
27 pursuant to Sections 10159.2 and 10177(h) of the Code.



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ORDER

WHEREFORE THE FOLLOWING ORDER IS MADE PURSUANT  
TO THE WRITTEN STIPULATION OF THE PARTIES:

I

All licenses and licensed rights of Respondents CSMC CORPORATION and JAMES DAVID NAYLOR under the Real Estate Law are  
revoked; provided, however, a restricted real estate broker  
license shall be issued to Respondents pursuant to Section 10156.5  
of the Code if Respondents make application therefor and pay to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this Decision. The restricted licenses issued to Respondents shall be subject to all of the provisions of Section 10156.7 of the Code and to the following limitations, conditions and restrictions imposed under authority of Section 10156.6 of the Code:

1. The restricted license issued to a Respondent may  
be suspended prior to hearing by Order of the Real Estate Commissioner in the event of a Respondent's conviction or plea of nolo contendere to a crime which is substantially related to a Respondent's fitness or capacity as a real estate licensee.
  
2. The restricted license issued to a Respondent may be  
suspended prior to hearing by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that a Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands



1 Law, Regulations of the Real Estate Commissioner or  
2 conditions attaching to the restricted license.

3  
4 3. Respondents shall not be eligible to apply for the  
5 issuance of an unrestricted real estate license nor for  
6 the removal of any of the conditions, limitations or  
7 restrictions of a restricted license until two years  
8 has elapsed from the effective date of this Decision.

9  
10 4. As a further condition for the Commissioner to enter  
11 into this Stipulation, Respondents, or either of them  
12 shall provide evidence satisfactory to the Real Estate  
13 Commissioner that they (1) have paid in full the audit  
14 assessed against Respondent CSMC CORPORATION in  
15 Threshold Report Audit No. LA 960499, for which  
16 Respondent JAMES DAVID NAYLOR is jointly responsible, or  
17 (2) that they are continuing to make \$200.00 monthly  
18 payments to the Department until said assessment is  
19 fully paid. If Respondents fail to satisfy this  
20 condition, the Commissioner may order the suspension of  
21 their restricted licenses until this assessment is paid  
22 in full.

23 5. Respondent JAMES DAVID NAYLOR shall, within nine  
24 months from the effective date of this Decision, present  
25 evidence satisfactory to the Real Estate Commissioner  
26 that Respondent has, since the most recent issuance of  
27 an original or renewal real estate license, taken and  
successfully completed the continuing education



1 requirements of Article 2.5 of Chapter 3 of the Real  
2 Estate Law for renewal of a real estate license. If  
3 Respondent fails to satisfy this condition, the  
4 Commissioner may order the suspension of the restricted  
5 license until the Respondent presents such  
6 evidence. The Commissioner shall afford Respondent the  
7 opportunity for a hearing pursuant to the Administrative  
8 Procedure Act to present such evidence.

9  
10 6. Respondent JAMES DAVID NAYLOR shall within six months  
11 from the effective date of this Decision, take and pass  
12 the Professional Responsibility Examination administered  
13 by the Department including the payment of the  
14 appropriate examination fee. If Respondent fails to  
15 satisfy this condition, the Commissioner may order  
16 suspension of Respondent's license until Respondent  
17 passes the examination.

18 III

19 Pursuant to Section 10148 of the Code, Respondents, or  
20 either of them shall pay the Commissioner's reasonable cost for an  
21 audit to determine if Respondents have corrected the trust fund  
22 violations found in paragraphs I and II of the Determination of  
23 Issues. In calculating the amount of the Commissioner's  
24 reasonable cost, the Commissioner may use the estimated average  
25 hourly salary for all persons performing audits of real estate  
26 brokers, and shall include an allocation for travel time to and  
27 from the auditor's place of work. Respondents shall pay such



1 cost, not to exceed \$4,200, within 45 days of receiving an invoice  
2 from the Commissioner detailing the activities performed during  
3 the audit and the amount of time spent performing those  
4 activities. The Commissioner may suspend the restricted license  
5 issued to either Respondent pending a hearing held in accordance  
6 with Section 11500, et seq., of the Government Code, if payment is  
7 not timely made as provided for herein, or as provided for in a  
8 subsequent agreement between the Respondents and the Commissioner.  
9 The suspension shall remain in effect until payment is made in  
10 full or until Respondents enter into an agreement satisfactory to  
11 the Commissioner to provide for payment, or until a decision  
12 providing otherwise is adopted following a hearing held pursuant  
13 to this condition.

14 DATED: 4-14-98 E. M. Lennan  
15 ELLIOTT MAC LENNAN  
16 Counsel for Complainant

17 \* \* \* \*

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



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DATED: 4-14-98

[Signature]  
CSMC CORPORATION  
Respondent,  
BY: JAMES DAVID NAYLOR, D.O.

DATED: 4-14-98

[Signature]  
JAMES DAVID NAYLOR,  
individually and as designated  
officer of CSMC Corporation,  
Respondent

\* \* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and Order and shall become effective at 12  
o' clock noon on June 11, 1998.

IT IS SO ORDERED 5/18, 1998.

JIM ANTT JR.  
Real Estate Commissioner  
[Signature]



*Sachs Jan*

**FILED**  
JAN 14 1998  
DEPARTMENT OF REAL ESTATE

1 ELLIOTT MAC LENNAN, Counsel  
2 State Bar No. 66674  
3 Department of Real Estate  
4 107 South Broadway, Room 8107  
5 Los Angeles, California 90012  
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8 Telephone (213) 897-3937

By *Jana B. Crane*

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

11 In the Matter of the Accusation of ) No. H- 27516 LA  
12 CSMC CORPORATION; )  
13 and JAMES DAVID NAYLOR, ) A C C U S A T I O N  
14 individually and )  
15 as designated officer of )  
16 CSMC Corporation, )  
Respondents. )

17 The Complainant, Thomas McCrady, a Deputy Real Estate  
18 Commissioner of the State of California, for cause of accusation  
19 against CSMC CORPORATION and JAMES DAVID NAYLOR, individually and  
20 as designated officer of CSMC Corporation, is informed and alleges  
21 in his official capacity as follows:

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I

CSMC CORPORATION (CSMC) and JAMES DAVID NAYLOR (NAYLOR), sometimes collectively referred to as Respondents, are presently licensed and/or have license rights under the Real Estate Law (Part 1 of Division 4 of the California Business and Professions Code).

II

All references to the "Code" are to the California Business and Professions Code and all references to "Regulations" are to Title 10, Chapter 6, California Code of Regulations.

III

At all times mentioned, CSMC was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker. CSMC was first licensed by the Department on March 14, 1987.

IV

At all times mentioned, NAYLOR was licensed by the Department as designated officer of CSMC to qualify CSMC and to act for CSMC as a real estate broker and, as provided by Section 10159.2 of the Code, was responsible for the supervision and control of the activities conducted on behalf of CSMC by its officers, managers and employees as necessary to secure full compliance with the provisions of the Real Estate Law including the supervision of the salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

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V

Whenever reference is made in an allegation in the accusation to an act or omission of CSMC such allegation shall be deemed to mean that the officers, directors, managers, employees, agents and real estate licensees employed by or associated with CSMC, including NAYLOR, committed such act or omission while engaged in the furtherance of the business or operation of CSMC and while acting within the course and scope of its corporate authority, agency and employment.

VI

At all times mentioned, CSMC and NAYLOR were acting as the agent or employee of the other and within the course and scope of such agency or employment.

VII

At all times mentioned, in the City of Burbank, Los Angeles County, California, Respondent CSMC and Respondent NAYLOR acted as real estate brokers within the meaning of Code Section 10131(d), whereby lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed, and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance. In addition, Respondents conducted their own broker controlled escrows under the exemption set forth in Section 17006(a)(4) of the California Financial Code.

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VIII

On November 10, 1997, the Department completed a field audit examination of the books and records pertaining to the activities requiring a real estate license by CSMC. The audit examination covered the period of time beginning on March 31, 1995 and ending on September 30, 1997. The audit examination revealed violations of the Code and the Regulations as now set forth.

IX

In connection with the aforesaid real estate activities defined in Paragraph VII, CSMC and NAYLOR, accepted or received funds in trust (trust funds) from investors for mortgage and loan brokerage activities. Respondents maintained the following trust account at the Bank of America in Burbank, California, Magnolia Park Branch, into which they deposited certain of these funds:

"CSMC Corporation Trust Account (T/A #1)  
Account No. 04589-14224"

"CSMC Corporation Trust Account (T/A #2)  
Account No. 04580-14253"

X

With respect to the trust funds referred to in Paragraph IX, CSMC and NAYLOR:

(a) Permitted, allowed or caused the disbursement of trust funds from T/A #1 where the disbursement of said funds reduced the total of aggregate funds in T/A #1, to an amount which, on September 30, 1997, was \$182.70 less than the existing aggregate trust fund liability of Respondents to every principal who was an owner of said funds, without first obtaining the prior

1 written consent of the owners of said funds, as required by  
2 Section 10145 of the Code and Section 2832.1 of the Regulations;  
3 (b) Failed to maintain a separate record for each  
4 beneficiary or transaction, thereby failing to account for all  
5 trust funds received, deposited, and disbursed out of T/A #2, as  
6 required by Sections 2831.1, 2950(d) and 2951 of the Regulations;  
7 and

8 (c) Failed to perform a monthly reconciliation of the  
9 balance of all separate beneficiary or transaction records  
10 maintained pursuant to Regulation 2831.1 with the record of all  
11 trust funds received and disbursed out of T/A #2, as required by  
12 Regulation 2831.2.

13 XI

14 The conduct of Respondents CSMC and NAYLOR, described in  
15 Paragraph X, violated the Code and the Regulations as set forth:

<u>Paragraph</u>	<u>Provisions Violated</u>
17 X(a)	18 Section 10145 & 10159.2 of the Code, and 19 Section 2832.1 of the Regulations
20 X(b)	21 Section 10145 & 10159.2 of the Code, and 22 Section 2831.1, 2950(d) and 2951 of the 23 Regulations, and
24 X(c)	25 Section 10145 & 10159.2 of the Code, and 26 Section 2831.2 of the Regulations

27 Each of the foregoing violations separately constitutes cause for  
the suspension or revocation of the real estate licenses and

1 license rights of Respondents CSMC and NAYLOR under the provisions  
2 of Section 10177(d) of the Code.

3 XII

4 The investigative audit revealed that Respondent CSMC's  
5 escrow instructions for its escrow operation failed to contain a  
6 statement which included the name of the licensee and the State of  
7 California department issuing the license or authority under which  
8 CSMC operated said escrow company. This conduct constitutes a  
9 violation of Section 17403.4 of the California Financial Code and  
10 is cause to suspend or revoke its real estate license and license  
11 rights under Sections 10177(d) and 10177(f) of the Code.

12 XIII

13 The audit examination also revealed, that CSMC met the  
14 criteria as a threshold broker, as described in Section 10232 of  
15 the Code, yet failed to provide the Department with Quarterly and  
16 Annual Trust Fund Status Reports. This conduct, including CSMC's  
17 failure to pay for the cost of the audit examination, constitutes  
18 a violation of Sections 10232.2 and 10232.25 of the Code and is  
19 cause to suspend or revoke the real estate license and license  
20 rights of CSMC under Section 10177(d).

21 XIV

22 The overall conduct of Respondents CSMC and NAYLOR, as  
23 described in Paragraphs VII through XIII above, constitutes  
24 negligence and/or incompetence. This conduct and violation are  
25 cause to suspend or revoke the real estate license and license  
26 rights of Respondents CSMC and NAYLOR and pursuant to Section  
27 10177(g) of the Code.



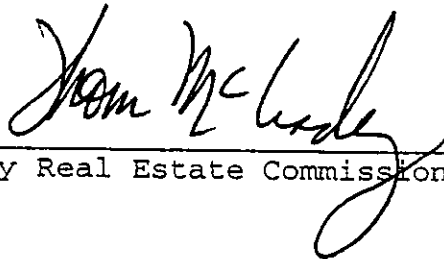


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The conduct of Respondent NAYLOR, constitutes a failure on the part of NAYLOR, as officer designated by a corporate broker licensee, to exercise the reasonable supervision and control over the licensed activities of CSMC as required by Section 10159.2 of the Code, and to keep it in compliance with the Real Estate Law, and is cause for the suspension or revocation of the real estate license and license rights of NAYLOR pursuant to the provisions of Sections 10159.2 and 10177(h) of the Code.

WHEREFORE, Complainant prays that a hearing be conducted on the allegations made by the accusation and, that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of against CSMC CORPORATION and JAMES DAVID NAYLOR, individually and as designated officer of CSMC Corporation 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 14th day of January, 1998.

  
Deputy Real Estate Commissioner

cc: CSMC Corporation.  
c/o James David Naylor, D.O.  
Sacto.  
DR