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**FILED**  
DEC 21 1998  
DEPARTMENT OF REAL ESTATE

By *K. Stredwell*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \*

In the Matter of the Accusation of	)	
	)	
PRIME SOURCE MORTGAGE	)	DRE H-27709 LA
CORPORATION and, MAXON BIXBY,	)	
SMITH, individually and as	)	
designated officer of Prime	)	
Source Mortgage Corporation	)	
	)	
	)	
Respondents.	)	

ORDER STAYING EFFECTIVE DATE

On November 22, 1998, a Stipulation and Agreement was entered into in the above-entitled matter to become effective December 22, 1998.

IT IS HEREBY ORDERED that the effective date of the Decision of November 22, 1998, is stayed for a period of 17 days.

The Stipulation and Agreement of November 22, 1998, shall become effective at 12 o'clock noon on January 8, 1999.

DATED DECEMBER 21, 1998

*Randolph Brendia*  
Randolph Brendia  
Regional Manager



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**  
DEC - 2 1998  
DEPARTMENT OF REAL ESTATE  
By K. Huderholt

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \* \*

11 In the Matter of the Accusation of ) NO. H-27709 LA  
12 PRIME SOURCE MORTGAGE CORPORATION; )  
13 and MAXSON BIXBY SMITH, ) STIPULATION AND AGREEMENT  
14 individually and as )  
15 designated officer of, )  
16 Prime Source Mortgage Corporation, )  
and S. JEFFREY FREUD, )  
Respondents. )

17 It is hereby stipulated by and between PRIME SOURCE  
18 MORTGAGE CORPORATION and MAXSON BIXBY SMITH, individually and as  
19 designated officer of PRIME SOURCE MORTGAGE CORPORATION, and S.  
20 JEFFREY FREUD (sometimes collectively referred to as Respondents),  
21 and the Complainant, acting by and through Elliott Mac Lennan,  
22 Counsel for the Department of Real Estate, as follows for the  
23 purpose of settling and disposing of the Accusation filed on July  
24 23, 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, but does  
5 constitute an estoppel, merger and bar to any such matters which  
6 were specifically alleged in this proceeding.

7  
8 8. Respondent PRIME SOURCE MORTGAGE CORPORATION, agrees  
9 that the Accusation may be amended to add a prayer for relief  
10 pursuant to Business and Professions Code Section 10139.5 to for  
11 the purpose of imposing a fine on said Respondent and Respondent  
12 hereby waives any protest to the inclusion of said Code Section.

13 DETERMINATION OF ISSUES

14 By reason of the foregoing stipulations, it is  
15 stipulated and agreed that the following determination of issues  
16 shall be made:

17 I

18 The conduct of PRIME SOURCE MORTGAGE CORPORATION, as  
19 described in Paragraph 4, is in violation of Sections 10137 and  
20 10240 of the Business and Professions Code (Code) and Section 2840  
21 of Title 10, Chapter 6 of the California Code of Regulations  
22 (Regulations) and is a basis for the suspension or revocation of  
23 said Respondent's, license and license rights as a violation of  
24 the Real Estate Law pursuant to Sections 10137 and 10177(d) of the  
25 Code.

26 /  
27 /

1 II

2 The conduct of MAXSON BIXBY SMITH, as described in  
3 Paragraph 4, constitutes a failure to keep PRIME SOURCE MORTGAGE  
4 CORPORATION in compliance with the Real Estate Law during the time  
5 that he was the officer designated by a corporate broker licensee  
6 and further constitutes a failure to exercise reasonable  
7 supervision and control over the licensed activities of PRIME  
8 SOURCE MORTGAGE CORPORATION and its salespersons which require a  
9 real estate license and is a basis for the suspension or  
10 revocation of Respondent's license pursuant to Sections 10159.2  
11 and 10177(h) of the Code.

12 III

13 The conduct of Respondent S. JEFFREY FREUD, as described  
14 in Paragraph 4, is in violation of Section 10130 of the Code and  
15 is cause to suspend or revoke his license and license rights under  
16 Section 10177(d).

17 ORDER

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

20 I

21 All license and license rights of Respondents PRIME  
22 SOURCE MORTGAGE CORPORATION, MAXSON BIXBY SMITH and S. JEFFREY  
23 FREUD under the Real Estate Law are suspended for a period of  
24 sixty (60) days from the effective date of this Decision;  
25 provided, however, that if Respondent's petition, thirty (30) days  
26 of said suspension shall be stayed on the condition that:  
27



1 1. Respondents pay a monetary penalty pursuant to  
2 Section 10175.2 of the Code at the rate of \$100.00  
3 for each day of said suspension stayed, for a total  
4 monetary penalty of \$3,000 each.

5  
6 2. Said payment shall be in the form of a cashier's  
7 check or certified check and payable to the Recovery  
8 Account of the Real Estate Fund. Said check must be  
9 delivered to the Department prior to the effective date  
10 of the Decision in this matter.

11 3. No further cause for disciplinary action  
12 against the real estate license of a Respondent occurs  
13 within two years of the effective date of the Decision  
14 in this matter.

15  
16 4. If a Respondent fails to pay the monetary penalty in  
17 accordance with the terms of the Decision, the  
18 Commissioner, may, without a hearing, order the  
19 immediate execution of all or any part of the 30 day  
20 stayed suspension, in which event the Respondent shall  
21 not be entitled to any repayment nor credit,  
22 prorated or otherwise, for money paid to the Department  
23 under the terms of this Decision.

24 5. If Respondent pays the monetary penalty and if no  
25 further cause for disciplinary action against the real  
26 estate license of a Respondent occurs within two (2)  
27 years from the effective date of this Decision, the



1 thirty (30) day stay granted pursuant to this paragraph  
2 shall become permanent.

3  
4 6. The remaining thirty (30) days of the sixty (60) day  
5 suspension shall be stayed for two (2) years upon the  
6 following terms and conditions:

7 (a) Respondents shall obey all laws, rules and  
8 regulations governing the rights, duties and  
9 responsibilities of a real estate licensee in the State  
10 of California; and

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

19  
20 II

21 For Respondent PRIME SOURCE MORTGAGE CORPORATION'S  
22 violation of Section 10137, Respondent is ordered to pay a fine of  
23 \$5,000 pursuant to the authority set forth in Section 10139.5 of  
24 the Code, prior to the effective date of any decision in this  
25 matter. If the fine is not paid within thirty (30) days of the  
26 effective date, or if not paid within any other time period agreed  
27 to by the Commissioner and the Respondent, the license of





1 Respondent shall be suspended until the fine is paid in full,  
2 including any interest accruing thereon.

3 DATED: 11-2-98 *Elliott Mac Lennan*  
4 ELLIOTT MAC LENNAN  
5 Counsel for Complainant

6 \* \* \* \*

7 We have read the Stipulation and Agreement and its terms  
8 are understood by us and are agreeable and acceptable to us. We  
9 understand that we are waiving rights given to us by the  
10 California Administrative Procedure Act (including but not limited  
11 to Sections 11506, 11508, 11509 and 11513 of the Government Code),  
12 and we willingly, intelligently and voluntarily waive those  
13 rights, including the right of requiring the Commissioner to prove  
14 the allegations in the Accusation at a hearing at which we would  
15 have the right to cross-examine witnesses against us and to  
16 present evidence in defense and mitigation of the charges.

17 DATED: October 12, 1998 *Maxon Bixby Smith*  
18 PRIME SOURCE MORTGAGE CORPORATION  
19 Respondent,  
20 BY: ~~MAXON~~ BIXBY SMITH, D.O.  
*MAXSON*

21 DATED: October 12, 1998 *Maxon Bixby Smith*  
*MAXSON* ~~MAXON~~ BIXBY SMITH,  
22 individually and as designated  
23 officer of Prime Source Mortgage  
24 Corporation, Respondent

25 DATED: \_\_\_\_\_  
26 S. JEFFREY FREUD  
27 Respondent

DATED: \_\_\_\_\_  
ROSE POTHIER, Esq.  
Counsel for Respondents

1 Respondent shall be suspended until the fine is paid in full,  
2 including any interest accruing thereon.

3 DATED: 10-28-98

Elliott Mac Lennan  
4 ELLIOTT MAC LENNAN  
5 Counsel for Complainant

6 \* \* \* \*

7 We have read the Stipulation and Agreement and its terms  
8 are understood by us and are agreeable and acceptable to us. We  
9 understand that we are waiving rights given to us by the  
10 California Administrative Procedure Act (including but not limited  
11 to Sections 11506, 11508, 11509 and 11513 of the Government Code),  
12 and we willingly, intelligently and voluntarily waive those  
13 rights, including the right of requiring the Commissioner to prove  
14 the allegations in the Accusation at a hearing at which we would  
15 have the right to cross-examine witnesses against us and to  
16 present evidence in defense and mitigation of the charges.

17 DATED: \_\_\_\_\_

18 PRIME SOURCE MORTGAGE CORPORATION  
19 Respondent,  
20 BY: MAXON BIXBY SMITH, D.O.

21 DATED: \_\_\_\_\_

22 MAXON BIXBY SMITH,  
23 individually and as designated  
24 officer of Prime Source Mortgage  
25 Corporation, Respondent

26 DATED: 10/21/98

S. Jeffrey Freud  
27 S. JEFFREY FREUD  
Respondent

DATED: 10/21/98

Rose Pothier  
ROSE POTHIER, Esq.  
Counsel for Respondents



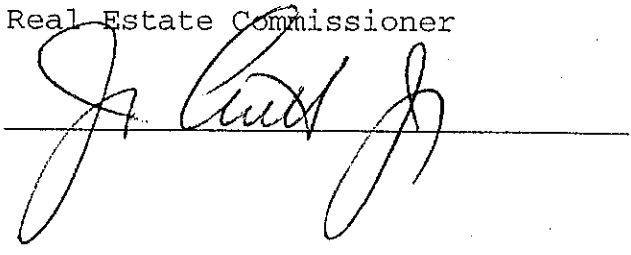
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The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and Order and shall become effective at 12  
o' clock noon on December 22, 1998.

IT IS SO ORDERED 11/22, 1998.

JIM ANTT JR.  
Real Estate Commissioner



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ELLIOTT MAC LENNAN, Counsel  
Department of Real Estate  
107 South Broadway, Room 8107  
Los Angeles, California 90012

(213) 897-3937

**FILED**  
JUL 23 1998  
DEPARTMENT OF REAL ESTATE

By K. Wiederholt

DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of )  
 )  
PRIME SOURCE MORTGAGE )  
CORPORATION and MAXSON BIXBY )  
SMITH, individually and as )  
designated officer of )  
Prime Source Mortgage )  
Corporation, and )  
S. JEFFREY FREUD, )  
 )  
 )  
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Respondents. )  
 )

No. H-27709 LA

A C C U S A T I O N

The Complainant, Thomas McCrady, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against PRIME SOURCE MORTGAGE CORPORATION and MAXSON BIXBY SMITH, individually and as designated officer of Prime Source Mortgage Corporation, and S. JEFFREY FREUD, is informed and alleges in his official capacity as follows:

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PRIME SOURCE MORTGAGE CORPORATION (PSMC) and MAXSON BIXBY SMITH (SMITH), individually and as designated officer of Prime Source Mortgage Corporation, and S. JEFFREY FREUD (FREUD), 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, PSMC was licensed by the Department of Real Estate of the State of California (Department) as a corporate real estate broker by and through SMITH as designated officer. PSMC was originally licensed by the Department on March 24, 1994.

IV

At all times mentioned, SMITH was licensed by the Department as designated officer of PSMC to qualify PSMC and to act for PSMC 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 PSMC 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



1 the performance of acts for which a real estate license is  
2 required. SMITH was originally licensed as a real estate broker  
3 on February 27, 1975.

4 V

5 FREUD was originally licensed as a real estate  
6 salesperson by the Department on November 25, 1992. His license  
7 expired on November 24, 1996 and was renewed on February 26, 1998.  
8 At all times mentioned, except for the period beginning on  
9 November 25, 1996 and ending on February 26, 1998, FREUD was  
10 licensed or had license rights issued by the Department as a real  
11 estate salesperson.

12 VI

13 Whenever reference is made in an allegation in the  
14 Accusation to an act or omission of PSMC such allegation shall be  
15 deemed to mean that the officers, directors, managers, employees,  
16 agents and real estate licensees employed by or associated with  
17 PSMC committed such act or omission while engaged in the  
18 furtherance of the business or operation of PSMC and while acting  
19 within the course and scope of its corporate authority, agency and  
20 employment.

21 VII

22 At all times mentioned, in the City of Huntington Beach,  
23 Los Angeles County, Respondent PSMC and Respondent SMITH acted as  
24 real estate brokers in the State of California within this meaning  
25 of Section 10131(d) of the Code, including the operation of a  
26 mortgage and loan brokerage with the public wherein lenders and  
27 borrowers were solicited for loans secured directly or



1 collaterally by liens on real property, wherein such loans were  
2 arranged, negotiated, processed, and consummated on behalf of  
3 others for compensation or in expectation of compensation and for  
4 fees often collected in advance.

5 VIII

6 (Audit No. LA 970365)

7 On March 30, 1998, the Department completed a field  
8 audit examination of the books and records of PSMC pertaining to  
9 its mortgage loan activities described in Paragraph VII. The  
10 audit examination covered a period of time beginning on July 10,  
11 1996, and ending on February 28, 1998. The audit examination  
12 revealed violations of the Code and the Regulations as set forth  
13 in the following paragraphs.

14 IX

15 At all times mentioned, in connection with the  
16 activities described in Paragraph VII, above, Respondents PSMC and  
17 SMITH accepted or received funds in trust (trust funds) from or on  
18 behalf of actual or prospective borrowers and lenders. Thereafter  
19 they made disposition of such funds. Respondents PSMC and SMITH  
20 did not maintain a trust account during the audit period.

21 X

22 The audit examination revealed that Respondent PSMC,  
23 with full knowledge that FREUD, a salesperson licensed by the  
24 Department and employed by PSMC, compensated him for performing  
25 acts for which a real estate license is required including  
26 negotiating loans secured by liens on real property and  
27 specifically including the following borrowers: Cutler,



1 Krivokopich, Berman and Frederick. This conduct and violation are  
2 cause to suspend or revoke the license and license rights of  
3 Respondent PSMC under Section 10137 of the Code.

4 XI

5 The conduct of FREUD in soliciting borrowers and  
6 originating mortgage and loan transactions, during a period  
7 between November 25, 1996 and not renewed until February 25, 1998,  
8 when his license had expired, as described in Paragraph XI, is in  
9 violation of Section 10130 of the Code and is cause to suspend or  
10 revoke his license and license rights under Section 10177(d).

11 XII

12 The audit examination also revealed that Respondent PSMC  
13 failed to provide a dated statement in writing containing all the  
14 information required by Section 10241 of the Code to borrowers  
15 Cutler, Leivan, Krivokopich, Berman and Frederick before they  
16 became obligated to perform under the terms of their loans. This  
17 omission constitutes a violation of Section 10240 of the Code and  
18 Regulation 2840 of the Regulations and constitutes cause for the  
19 suspension or revocation of the real estate license and license  
20 rights of Respondent PSMC under Section 10177(d) of the Code.

21 XIII

22 The overall conduct of Respondent PSMC, constitutes  
23 negligence and/or incompetence. This conduct and violations are  
24 cause to suspend or revoke the real estate license and license  
25 rights of said PSMC pursuant to Section 10177(g) of the Code.

26 /  
27 /





XIV

1  
2 The conduct of Respondent SMITH, constitutes a failure  
3 on his part, as officer designated by a corporate broker licensee,  
4 to exercise the reasonable supervision and control over the  
5 licensed activities of PMC and its salespersons and to keep it in  
6 compliance with the Real Estate Law, is cause for the suspension  
7 or revocation of the real estate license and license rights of  
8 SMITH under Sections 10159.2 and 10177(h) of the Code.

9 WHEREFORE, Complainant prays that a hearing be conducted  
10 on the allegations made by the Accusation and, that upon proof  
11 thereof, a decision be rendered imposing disciplinary action  
12 against the license and license rights of PRIME SOURCE MORTGAGE  
13 CORPORATION and MAXSON BIXBY SMITH, individually and as designated  
14 officer of Prime Source Mortgage Corporation, and S. JEFFREY  
15 FREUD, under the Real Estate Law (Part 1 of Division 4 of the  
16 Business and Professions Code) and for such other and further  
17 relief as may be proper under other applicable provisions of law,  
18 including the imposition of a fine of up to \$10,000 pursuant to  
19 the provisions of Section 10139.5 of the Business and Professions  
20 Code.

21 Dated at Los Angeles, California

22 this 23rd day of July, 1998.

23 THOMAS MC CRADY

24 Deputy Real Estate Commissioner

25  
26 cc: Prime Source Mortgage Corporation &  
27 S. Jeffrey Freud  
c/o Maxson Bixby Smith, D.O.  
Sacto  
RW

