

*Suzanne Jones*

**FILED**  
SEP 21 2000  
DEPARTMENT OF REAL ESTATE

Department of Real Estate  
320 West 4th Street, Suite 350  
Los Angeles, California 90013-1105

Telephone: (213) 576-6911

By *Laura B. Crane*

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

\* \* \* \* \*

In the Matter of the Accusation of	)	No. H-28520 LA
AMERICAN MIDDLE CLASS MORTGAGE	)	
& REAL ESTATE, INC.; T.C.B.	)	<u>STIPULATION AND AGREEMENT</u>
FINANCIAL & INVESTMENT, INC.;	)	
PREMIER CAPITAL, INC.;	)	
UNIVERSAL NETWORK MORTGAGE CO.	)	
a California Corporate Real	)	
Estate Broker and BERNARD	)	
MARION BARNES individually and	)	
as designated officer of	)	
American Middle Class Mortgage	)	
& Real Estate, Inc.; T.C.B.	)	
Financial & Investment Inc.;	)	
Premier Capital, Inc.; and	)	
Universal Network Mortgage Co.	)	
and dba Alpha Capital	)	
Financial, AMC Mortgage	)	
AMC/ATF Realty,	)	
BMB Investments, Maxwell	)	
Realty & Investments Group,	)	
and Omni Investments,	)	
Respondents	)	

It is hereby stipulated by and between AMERICAN MIDDLE CLASS MORTGAGE & REAL ESTATE, INC.; T.C.B. FINANCIAL & INVESTMENT, INC.; PREMIER CAPITAL, INC.; UNIVERSAL NETWORK MORTGAGE CO. a California Real Estate Broker and BERNARD MARION BARNES,

1 individually and as designated officer of American Middle Class  
2 Mortgage & Real Estate, Inc.; T.C.B. Financial & Investment Inc.;  
3 Premier Capital, Inc.; and Universal Network Mortgage Co.  
4 and dba Alpha Capital Financial, AMC Mortgage AMC/ATF Realty  
5 BMB Investments, Maxwell Realty & Investments Group,  
6 and Omni Investments (sometimes collectively referred to as  
7 Respondents), and the Complainant, acting by and through Elliott  
8 Mac Lennan, Counsel for the Department of Real Estate, as follows  
9 for the purpose of settling and disposing of the Accusation filed  
10 on April 26, 2000, in this matter:  
11

12 1. All issues which were to be contested and all  
13 evidence which was to be presented by Complainant and Respondents  
14 at a formal hearing on the Accusation, which hearing was to be  
15 held in accordance with the provisions of the Administrative  
16 Procedure Act (APA), shall instead and in place thereof be  
17 submitted solely on the basis of the provisions of this  
18 Stipulation and Agreement (Stipulation).

19 2. Respondents have received, read and understand the  
20 Statement to Respondent, the Discovery Provisions of the APA and  
21 the Accusation filed by the Department of Real Estate in this  
22 proceeding.

23 3. Respondents filed a Notice of Defense pursuant to  
24 Section 11506 of the Government Code for the purpose of requesting  
25 a hearing on the allegations in the Accusation. Respondents  
26 hereby freely and voluntarily withdraw said Notice of Defense.  
27 Respondents acknowledge that they understand that by withdrawing  
said Notice of Defense they thereby waive their right to require

1 the Commissioner to prove the allegations in the Accusation at a  
2 contested hearing held in accordance with the provisions of the  
3 APA and that they will waive other rights afforded to them in  
4 connection with the hearing such as the right to present evidence  
5 in their defense the right to cross-examine witnesses.  
6

7 4. This Stipulation is based on the factual allegations  
8 contained in the Accusation. In the interest of expedience and  
9 economy, Respondents choose not to contest these allegations, but  
10 to remain silent and understand that, as a result thereof, these  
11 factual allegations, without being admitted or denied, will serve  
12 as a prima facie basis for the disciplinary action stipulated to  
13 herein. The Real Estate Commissioner shall not be required to  
14 provide further evidence to prove said factual allegations.

15 5. This Stipulation is based on Respondents' decision  
16 not to contest the allegations set forth in the Accusation as a  
17 result of the agreement negotiated between the parties. This  
18 Stipulation is expressly limited to this proceeding and any  
19 further proceeding initiated by or brought before the Department  
20 of Real Estate based upon the facts and circumstances alleged in  
21 the Accusation and is made for the sole purpose of reaching an  
22 agreed disposition of this proceeding without a hearing. The  
23 decision of Respondents not to contest the allegations is made  
24 solely for the purpose of effectuating this Stipulation. It is  
25 the intent and understanding of the parties that this Stipulation  
26 shall not be binding or admissible against Respondents in any  
27 actions against Respondents by third parties.



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6. It is understood by the parties that the Real Estate Commissioner may adopt this Stipulation as her Decision in this matter thereby imposing the penalty and sanctions on Respondents' real estate licenses and license rights as set forth in the "Order" herein below. In the event that the Commissioner in her discretion does not adopt the Stipulation, 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 stipulation or waiver made herein.

7. The Order or any subsequent Order of the Real Estate Commissioner made pursuant to this Stipulation 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.

DETERMINATION OF ISSUES

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

I

The conduct of BERNARD MARION BARNES, as described in Paragraph 4, is in violation of Sections 10145 and 10162 of the Business and Professions Code (Code) and Sections 2715 and 2832 of Title 10, Chapter 6 of the California Code of Regulations (Regulations) and is a basis for the suspension or revocation of Respondent's licenses and license rights as a violation of the Real Estate Law pursuant to Section 10177(d) of the Code.

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II

The conduct of AMERICAN MIDDLE CLASS MORTGAGE & REAL ESTATE, INC., as described in Paragraph 4, is in violation of Section 2731 of the Regulations and is a basis for the suspension or revocation of Respondent's license and license rights as a violation of the Real Estate Law pursuant to Section 10177(d) of the Code.

III

The conduct of TCB FINANCIAL & INVESTMENT, INC., as described in Paragraph 4, is in violation of Section 2731 of the Regulations and is a basis for the suspension or revocation of Respondent's license and license rights as a violation of the Real Estate Law pursuant to Section 10177(d) of the Code.

IV

The conduct of PREMIER CAPITAL, INC., as described in Paragraph 4, is in violation of Sections 10161.8 and 10162 of the Code and Sections 2715 and 2752 of the Regulations and is a basis for the suspension or revocation of Respondent's license and license rights as a violation of the Real Estate Law pursuant to Section 10177(d) of the Code.

V

The conduct of UNIVERSAL NETWORK MORTGAGE CO., as described in Paragraph 4, is in violation of Section 10161.8 of the Code and Sections 2715 and 2731 of the Regulations and is a basis for the suspension or revocation of Respondent's license and license rights as a violation of the Real Estate Law pursuant to Section 10177(d) of the Code.

1  
2 ORDER

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

5 I

6 The licenses and licensing rights of BERNARD MARION  
7 BARNES under the Real Estate Law are suspended for a period of  
8 thirty (30) days from the effective date of this Decision;  
9 provided, however, that all thirty (30) days of said suspension  
10 shall be permanently stayed for two (2) years upon the following  
11 terms and conditions:

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

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

23 3. As a condition for the Commissioner to stay the  
24 thirty day suspension, Respondent, during the two year period of  
25 the stayed suspension, shall not serve as the designated broker at  
26 any corporate real estate broker or broker of record for any  
27 any corporate real estate broker or broker of record for any



1  
2 unincorporated business until and unless Respondent owns fifty-one  
3 (51%) percent of the corporation or business.

4 4. Pursuant to Section 10148 of the Business and  
5 Professions Code, Respondent BERNARD MARION BARNES shall pay the  
6 Commissioner's reasonable cost for a subsequent audit to determine  
7 if Respondent is now in compliance with the Real Estate Law. In  
8 calculating the amount of the Commissioner's reasonable cost, the  
9 Commissioner may use the estimated average hourly salary for all  
10 persons performing audits of real estate brokers, and shall  
11 include an allocation for travel time to and from the auditor's  
12 place of work. Said amount for the subsequent audit shall not  
13 exceed \$1,200.

14 5. Respondent shall pay such cost within 45 days of receiving an  
15 invoice from the Commissioner detailing the activities performed  
16 during the audit and the amount of time spent performing those  
17 activities.

18 The Commissioner may suspend the license of Respondent  
19 pending a hearing held in accordance with Section 11500, et seq.,  
20 of the Government Code, if payment is not timely made as provided  
21 for herein, or as provided for in a subsequent agreement between  
22 the Respondent and the Commissioner. The suspension shall remain  
23 in effect until payment is made in full or until Respondent enters  
24 into an agreement satisfactory to the Commissioner to provide for  
25 payment, or until a decision providing otherwise is adopted  
26 following a hearing held pursuant to this condition.

27 /  
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Respondents AMERICAN MIDDLE CLASS MORTGAGE & REAL ESTATE, INC.; T.C.B. FINANCIAL & INVESTMENT, INC.; PREMIER CAPITAL, INC.; and UNIVERSAL NETWORK MORTGAGE CO., are publicly reproved.

\* \* \* \*

EXECUTION OF THE STIPULATION

We have read the Stipulation and Agreement and its terms are understood by us and are agreeable and acceptable to us. 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 to require 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.

FACSIMILE TRANSMISSION

Respondents can signify acceptance and approval of the terms and conditions of this Stipulation and Agreement by faxing a copy of its signature page, as actually signed by Respondents, to the Department at the following telephone/fax number: (213) 576-6917. Respondents agree, acknowledge and understand that by electronically sending to the Department a fax copy of their actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall

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be as binding on Respondents as if the Department had received the original signed Stipulation and Agreement.

DATED: 7/31/00 Bernard Marion Barnes  
BERNARD MARION BARNES, Respondent

DATED: 7/31/00 Bernard Marion Barnes  
AMERICAN MIDDLE CLASS MORTGAGE &  
REAL ESTATE, INC., Respondent  
BY: BERNARD MARION BARNES

DATED: 7/31/00 Bernard Marion Barnes  
TCB FINANCIAL & INVESTMENT, INC.  
Respondent.  
BY: BERNARD MARION BARNES

DATED: 7/31/00 Bernard Marion Barnes  
PREMIER CAPITAL INC.,  
Respondent.  
BY: BERNARD MARION BARNES

DATED: 7/31/00 Bernard Marion Barnes  
UNIVERSAL NETWORK MORTGAGE CO.  
Respondent. Liby Adels 7/31/00  
BY: BERNARD MARION BARNES

DATED: 7/31/00 Charles M. Rubel  
CHARLES M. RUBEL, Esq.  
Attorney for Bernard Marion Barnes

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COURT REPORT  
STATE OF CALIFORNIA  
S. G. 113 (Rev. 1/94)  
OFFICE OF THE  
CLERK OF THE COURT

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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 September 25, 2000

IT IS SO ORDERED September 8, 2000

PAULA REDDISH ZINNEMANN  
Real Estate Commissioner

*Paula Reddish Zinnemann*

*Sacto*

BEFORE THE DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

**FILED**  
JUN 15 2000  
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of )  
AMERICAN MIDDLE CLASS )  
MORTGAGE & REAL ESTATE, INC., )  
et al., )  
Respondent(s) )

Case No. H-28520 LA )  
OAH No. L-2000050238 )

By Jane B. Quinn

**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 the Office of Administrative Hearings, 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, California, on JULY 14, 2000, at the hour of 9:00 a.m., or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served upon you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of hearing.

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 and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

Dated: JUN 15 2000

DEPARTMENT OF REAL ESTATE

By: Elliott MacLennan  
ELLIOTT MAC LENNAN, Counsel

cc: American Middle Class Mortgage &  
Real Estate Inc.  
TCB Financial & Investment Inc.  
Premier Capital Inc.  
Universal Network Mortgage Co.  
Bernard Marion Barnes  
Sacto, OAH  
Charles Rubel, Esq.

*Exhibits*

**FILED**  
APR 26 2000  
DEPARTMENT OF REAL ESTATE

ELLIOTT MAC LENNAN, Counsel 66674  
Department of Real Estate  
320 West 4th Street, Suite 350  
Los Angeles, California 90013-1105  
Telephone: (213) 576-6911

By Laura B. Orma

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DEPARTMENT OF REAL ESTATE  
STATE OF CALIFORNIA

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In the Matter of the Accusation of ) No. H-28520 LA  
)  
AMERICAN MIDDLE CLASS MORTGAGE )  
& REAL ESTATE, INC.; T.C.B. ) A C C U S A T I O N  
FINANCIAL & INVESTMENT, INC.; )  
PREMIER CAPITAL, INC.; )  
UNIVERSAL NETWORK MORTGAGE CO. )  
a California Real Estate Broker )  
and BERNARD MARION BARNES, )  
individually and as )  
designated officer of )  
American Middle Class Mortgage )  
& Real Estate, Inc.; T.C.B. )  
Financial & Investment Inc.; )  
Premier Capital, Inc.; and )  
Universal Network Mortgage Co. )  
and dbas Alpha Capital )  
Financial, AMC Mortgage )  
AMC/ATF Realty )  
BMB Investments, Maxwell )  
Realty & Investments Group, )  
and Omni Investments )  
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Respondents. )  
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1 The Complainant, Thomas McCrady, a Deputy Real Estate  
2 Commissioner of the State of California, for cause of Accusation  
3 against AMERICAN MIDDLE CLASS MORTGAGE & REAL ESTATE, INC.; T.C.B.  
4 FINANCIAL & INVESTMENT, INC.; PREMIER CAPITAL, INC.; UNIVERSAL  
5 NETWORK MORTGAGE CO. California Real Estate Brokers and BERNARD  
6 MARION BARNES, individually and as designated officer of American  
7 Middle Class Mortgage & Real Estate, Inc.; T.C.B. Financial &  
8 Investment Inc.; Premier Capital, Inc. dba Pacific Capital  
9 Funding; Universal Network Mortgage Co., and doing business as  
10 Alpha Capital Financial, AMC Mortgage, AMC/ATF Realty, BMB  
11 Investments, Maxwell Realty & Investments Group, and Omni  
12 Investments, is informed and alleges in his official capacity as  
13 follows:

14 1

15 AMERICAN MIDDLE CLASS MORTGAGE & REAL ESTATE, INC.  
16 (AMERICAN); T.C.B. FINANCIAL & INVESTMENT, INC. (TCB); PREMIER  
17 CAPITAL, INC. (PREMIER); UNIVERSAL NETWORK MORTGAGE CO. (UNIVERSAL)  
18 and BERNARD MARION BARNES (BARNES), individually and as designated  
19 officer of the aforesaid corporate real estate brokers, sometimes  
20 collectively referred to as Respondents, are presently licensed  
21 and/or have license rights under the Real Estate Law (Part 1 of  
22 Division 4 of the California Business and Professions Code).

23 2

24 All references to the "Code" are to the California  
25 Business and Professions Code and all references to "Regulations"  
26 are to Title 10, Chapter 6, California Code of Regulations.  
27 /



1 At all times mentioned, AMERICAN, TCB, PREMIER, and  
2 UNIVERSAL were licensed by the Department of Real Estate of the  
3 State of California (Department) as corporate real estate brokers  
4 by and through BARNES as designated officer.  
5

6 At all times mentioned, BARNES was licensed by the  
7 Department as designated officer of AMERICAN, TCB, PREMIER, and  
8 UNIVERSAL to qualify them and to act for them as their real estate  
9 broker and, as provided by Section 10159.2 of the Code, was  
10 responsible for the supervision and control of the activities  
11 conducted on their behalf by their officers, managers and  
12 employees as necessary to secure full compliance with the  
13 provisions of the Real Estate Law including the supervision of the  
14 salespersons licensed to said corporations in the performance of  
15 acts for which a real estate license is required. BARNES was  
16 originally licensed as a real estate broker on January 19, 1976.  
17

18 Whenever reference is made in an allegation in the  
19 Accusation to an act or omission of AMERICAN, TCB, PREMIER, and  
20 UNIVERSAL such allegation shall be deemed to mean that the  
21 officers, directors, managers, employees, agents and real estate  
22 licensees employed by or associated with said corporations  
23 committed such act or omission, including BARNES, while engaged in  
24 the furtherance of the business or operation of said corporations  
25 and while acting within the course and scope of their corporate  
26 authority, agency and employment.  
27



PREMIER CAPITAL FUNDING

6

At all times mentioned, in the City of Tarzana, Los Angeles County, PREMIER dba Pacific Capital Funding acted as a real estate broker within the meaning of Section 10131(d) of the Code, including operating a mortgage and loan brokerage.

7

On November 16, 1998, the Department completed an audit examination of the books and records of PREMIER pertaining to its mortgage and loan activities described in Paragraph 6. The audit examination covered a period of time beginning on January 1, 1998 and ending on September 30, 1998. The general purpose of the audit was to determine if PREMIER handled trust funds in compliance with the applicable Real Estate Law. The specific purpose of the audit was to review supervision of PREMIER by BARNES. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs.

8

At all times mentioned, in connection with the activities described in Paragraph 6, above, PREMIER did not maintain a trust account during the audit period, nor was it required to do so.

9

With respect to the activities referred to in Paragraph 6, PREMIER:

/



1 (a) Failed to notify the Department of the change of  
 2 its main office address to 5530 Corbin Avenue #175, Tarzana, CA  
 3 91356. This conduct constitutes a violation of Section 10162 of  
 4 the Code and Section 2715 of the Regulations and is cause to  
 5 suspend or revoke the real estate license and license rights of  
 6 PREMIER under Sections 10165 and 10177(d) of the Code. This  
 7 violation has been corrected.

8 (b) Failed to notify the Department of the employment  
 9 of licensees Lourdes Aguilar Melgar and Ever M. Guzmán, as  
 10 required by Section 10161.8 of the Code and Section 2752 of the  
 11 Regulations. This violation has been corrected.

12 10

13 The conduct of PREMIER, described in Paragraph 9, above,  
 14 violated the Code and the Regulations now set forth:

15	<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
16	9(a)	Section 10162 of the Code, and
17		Section 2715 of the Regulations
18		
19	9(b)	Section 10161.8 of the Code, and
20		Sections 2752 of the Regulations

21 Each of the foregoing violations separately constitutes cause for  
 22 the suspension or revocation of the real estate license and  
 23 license rights of PREMIER under Section 10177(d) of the Code.

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AMERICAN MIDDLE CLASS MORTGAGE & REAL ESTATE, INC.

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At all times mentioned, in the City of Tarzana, Los Angeles County, AMERICAN, acted as a real estate broker within the meaning of Section 10131(d) of the Code, including operating a mortgage and loan brokerage.

12

On November 2, 1998, the Department completed an audit examination of the books and records of AMERICAN pertaining to its mortgage and loan activities described in Paragraph 11. The audit examination covered a period of time beginning on January 1, 1998 and ending on September 30, 1998. The specific purpose of the audit was to review supervision of AMERICAN by BARNES.

13

The audit examination revealed that AMERICAN used the fictitious names of AMC Mortgage, AMC/ATF Escrow, and ATF Realty to conduct licensed activities on its behalf without holding a license bearing said fictitious business names. The conduct of AMERICAN, in failing to obtain licenses for use of the aforesaid names, is in violation of Section 2731 of the Regulations and is cause to suspend or revoke Respondent AMERICAN's real estate license and license rights under Section 10177(d) of the Code. This violation has been corrected.

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UNIVERSAL NETWORK MORTGAGE CO.

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At all times mentioned, in the City of Encino, Los Angeles County, UNIVERSAL, acted as a real estate broker within the meaning of Section 10131(d) of the Code, including operating a mortgage and loan brokerage.

15

On November 18, 1998, the Department completed an audit examination of the books and records of UNIVERSAL pertaining to its mortgage and loan activities described in Paragraph 14. The audit examination covered a period of time beginning on January 1, 1998 and ending on September 30, 1998. The specific purpose of the audit was to review supervision of UNIVERSAL by BARNES.

16

The audit examination also revealed that UNIVERSAL used the fictitious name of "Universal Network Mortgage" to conduct licensed activities on its behalf without holding a license bearing said fictitious business name. Specifically, UNIVERSAL used Universal Network Mortgage on loan applications. UNIVERSAL's conduct, in failing to obtain a license for use of the name Universal Network Mortgage, is in violation of Section 2731 of the Regulations and is cause to suspend or revoke its' real estate license and license rights under Section 10177(d) of the Code.

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1 The audit examination furthermore revealed that  
2 UNIVERSAL failed to notify the Department of the employment of  
3 licensee Lily Adibi, as required by Section 10161.8 of the Code  
4 and Section 2752 of the Regulations. This conduct is cause to  
5 suspend or revoke the license and license rights of the UNIVERSAL  
6 under the provisions of Section 10177(d) of the Code.  
7

8 The audit examination revealed that UNIVERSAL failed to  
9 initiate and maintain a written Broker-Salesperson agreement with  
10 Lily Adibi, in violation of Regulation 2726. This conduct and  
11 violation are cause to suspend or revoke UNIVERSAL's license and  
12 license rights under Section 10177(d) of the Code.  
13

14 **T. C. B. FINANCIAL & INVESTMENT, INC.**  
15

16 At all times mentioned, in the City of Encino, Los  
17 Angeles County, TCB. acted as a real estate broker within the  
18 meaning of Section 10131(d) of the Code, including operating a  
19 mortgage and loan brokerage.  
20

21 On November 19, 1998, the Department completed a audit  
22 examination of the books and records of TCB pertaining to its  
23 mortgage and loan activities described in Paragraph 19. The audit  
24 examination covered a period of time beginning on March 13, 1998  
25 and ending on September 30, 1998. The specific purpose of the  
26 audit was to review supervision of TCB by BARNES.  
27



1 The audit examination also revealed that TCB used the  
2 fictitious name of "T C B Financial" to conduct licensed  
3 activities on behalf of TCB without holding a license this name.  
4 Specifically, TCB used the aforementioned fictitious name on loan  
5 documentation. The conduct of TCB, in failing to obtain a license  
6 for use of the aforesaid name, is in violation of Section 2731 of  
7 the Regulations and is cause to suspend or revoke TCB's real  
8 estate license and license rights under Section 10177(d) of the  
9 Code.

10  
11 **BERNARD MARION BARNES**

22

13 On November 24, 1998, the Department completed a field  
14 audit examination of the books and records of BARNES dba BMB  
15 Investments and Omni Investments pertaining to its mortgage and  
16 loan activities requiring a real estate license. The audit  
17 examination covered a period of time beginning on January 1, 1998  
18 and ending on September 30, 1998. The specific purpose of the  
19 audit examination was to review the supervision of salespersons in  
20 BARNES employ and supervision of branch offices by BARNES. The  
21 audit examination revealed violations of the Code and the  
22 Regulations as set forth in the following paragraphs.

23  
24 23

25 The audit examination revealed that BARNES failed to  
26 maintain an adequate control record in the form of a columnar  
27 record in chronological order of all trust funds received but not



1 placed into a trust account for buyer's checks and earnest money  
2 deposits forwarded directly to escrow, as required by Section 2831  
3 of the Regulations. During the audit period BARNES did not, nor  
4 was he required to maintain a trust account. This conduct and  
5 violations are cause to suspend or revoke the real estate license  
6 and license rights of BARNES under Section 10177(d) of the Code.

7 24

8 The audit examination revealed that BARNES failed to  
9 initiate and maintain written Broker-Salesperson agreements with  
10 salespersons Tehrani and Costigan who performed real estate  
11 activities under the fictitious business name of Omni Investments  
12 and Hunter who performed real estate activity under the fictitious  
13 business name ARC Mortgage, both fictitious names licensed by and  
14 under BARNES in his individual real estate broker capacity, in  
15 violation of Regulation 2726. This conduct, the failure to have  
16 Broker-Salesperson agreements is also cause to suspend or revoke  
17 BARNES' license and license rights under Sections 10177(d) and  
18 10177(h) of the Code.

19 25

20 The audit examination also revealed that BARNES dba Omni  
21 Investments failed to notify the Department of the employment of  
22 licensee Hunter, as required by Section 10161.8 of the Code and  
23 Section 2752 of the Regulations. This conduct is cause to suspend  
24 or revoke the license and license rights of the BARNES under the  
25 provisions of Section 10177(d) of the Code.

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1 The audit examination also revealed that BARNES failed  
 2 to retain the original license certificates of licensees Tehrani  
 3 and Hunter, as required by Section 10160 of the Code and Section  
 4 2753 of the Regulations. This conduct is cause to suspend or  
 5 revoke the license and license rights of the BARNES under the  
 6 provisions of Section 10177(d) of the Code.  
 7

8 The audit examination also revealed that BARNES used the  
 9 fictitious name of "ARC Mortgage" and "Omni Home Loan" to conduct  
 10 licensed activities on his behalf without holding a license  
 11 bearing said fictitious business names. Specifically, ARC  
 12 Mortgage and Omni Home Loan were found on BARNES' and Tehrani's  
 13 business cards, and on the Springs loan application and the  
 14 Springs Mortgage Loan Disclosure Statement. BARNES only licensed  
 15 fictitious business names are: AMC Mortgage, ATF Realty, Alpha  
 16 Capital Financial Investments, Maxwell Realty & Investments Group,  
 17 and Omni Investments. BARNES conduct, in failing to obtain  
 18 licenses for use of ARC Mortgage and Omni Home Loan, is in  
 19 violation of Section 2731 of the Regulations and is cause to  
 20 suspend or revoke BARNES' real estate license and license rights  
 21 under Section 10177(d) of the Code.  
 22

23 The overall conduct of the corporate Respondents  
 24 PREMIER, AMERICAN, UNIVERSAL and TCB constitutes negligence and/or  
 25 incompetence. This conduct and violations are cause to suspend or  
 26  
 27



1 revoke the real estate licenses and license rights of said  
2 Respondents under Section 10177(g) of the Code.

30

3 The overall conduct of BARNES constitutes negligence  
4 and/or incompetence. This conduct and violations are cause to  
5 suspend or revoke his real estate license and license rights under  
6 Section 10177(g) of the Code.

31

8 BARNES conduct constitutes a failure on his part, as  
9 officer designated by the four named corporate broker licensees,  
10 to exercise reasonable supervision and control over the licensed  
11 activities of the aforesaid corporate broker respondents, and to  
12 keep them in compliance with the Real Estate Law, and is cause for  
13 the suspension or revocation of his real estate license and  
14 license rights under Sections 10159.2, 10177(d) and 10177(h) of  
15 the Code.

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1 WHEREFORE, Complainant prays that a hearing be conducted  
2 on the allegations made by the Accusation and, that upon proof  
3 thereof, a decision be rendered imposing disciplinary action  
4 against the license and license rights of AMERICAN MIDDLE CLASS  
5 MORTGAGE & REAL ESTATE, INC.; T.C.B. FINANCIAL & INVESTMENT, INC.;  
6 PREMIER CAPITAL, INC.; UNIVERSAL NETWORK MORTGAGE CO. a California  
7 Real Estate Broker and BERNARD MARION BARNES, individually and as  
8 designated officer of American Middle Class Mortgage & Real  
9 Estate, Inc.; T.C.B. Financial & Investment, Inc.; Premier  
10 Capital, Inc.; and Universal Network Mortgage Co. under the Real  
11 Estate Law (Part 1 of Division 4 of the Business and Professions  
12 Code) and for such other and further relief as may be proper under  
13 other applicable provisions of law.

14 Dated at Los Angeles, California

15 this 26th day of April, 2000.

16   
17 \_\_\_\_\_  
18 Deputy Real Estate Commissioner

19  
20  
21 cc: American Middle Class Mortgage  
22 & Real Estate, Inc.  
23 T.C.B. Financial & Investment, Inc.  
24 Universal Network Mortgage Co.  
25 c/o Bernard Marion Barnes, D.O.  
26 Premier Capital, Inc.  
27 Sacto.  
TM  
SR

