

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)



By 67

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

DAVID S. TOYAMA, individually
and doing business as California
Community Mortgage and David
Steven Realtors,

Respondent.

) DRE No. H-28711 LA
)
) OAH No. L-2000090271
)
) STIPULATION
) AND
) AGREEMENT
)

It is hereby stipulated by and between DAVID S. TOYAMA,
individually and doing business as California Community Mortgage
and David Steven Realtors (sometimes referred to as
"Respondent"), represented by Frank Buda, Esq., 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
August 25, 2000, and the First Amended Accusation filed on
January 16, 2002, in this matter.

1. All issues which were to be contested and all
evidence which was to be presented by Complainant and Respondent

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedure Act ("APA"), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation and Agreement ("Stipulation").

6 2. Respondent has received, read and understands the
7 Statement to Respondent, the Discovery Provisions of the APA and
8 the Accusation filed by the Department of Real Estate in this
9 proceeding.

10 3. Respondent filed a Notice of Defense pursuant to
11 Section 11506 of the Government Code for the purpose of
12 requesting a hearing on the allegations in the Accusation.
13 Respondent hereby freely and voluntarily withdraws said Notice of
14 Defense. Respondent acknowledges that he understands that by
15 withdrawing said Notice of Defense he thereby waives his right to
16 require the Commissioner to prove the allegations in the
17 Accusation at a contested hearing held in accordance with the
18 provisions of the APA and that he will waive other rights
19 afforded to him in connection with the hearing such as the right
20 to present evidence in his defense of the allegations in the
21 Accusation and the right to cross-examine witnesses.

22 4. This Stipulation is based on the allegations
23 contained in the Accusation. In the interest of expedience and
24 economy, Respondent chooses not to contest these allegations, but
25 to remain silent and understands that, as a result thereof, these
26 allegations, without being admitted or denied, will serve as a
27 prima facie basis for the disciplinary action stipulated to

1 herein. The Real Estate Commissioner shall not be required to
2 provide further evidence to prove said allegations.

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

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

26 7. The Order or any subsequent Order of the Real
27 Estate 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 do
5 constitute a bar, estoppel and merger as to any allegations
6 actually contained in the Accusation against Respondent herein.

7 DETERMINATION OF ISSUES

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

10 The conduct of DAVID S. TOYAMA, as described in
11 Paragraph 4, constitutes negligence and is a basis for the
12 suspension or revocation of Respondent's license pursuant to
13 Section 10177(g) of the Business and Professions Code.

14 ORDER

15 WHEREFORE THE FOLLOWING ORDER IS HEREBY MADE:

16 All licenses and licensing rights of Respondent DAVID
17 S. TOYAMA under the Real Estate Law are suspended for a period of
18 thirty (30) days from the effective date of this Decision;
19 provided, however, that all thirty (30) days of said suspension
20 shall be stayed for two (2) years upon the following terms and
21 conditions:

22 1. Respondent locate and repay Lender Rebates of
23 \$3,525, as described in Paragraphs 7 and 8 of the Accusation and
24 in Issue 2 of Audit Reports LA 990418 and LA 990489, to the named
25 borrowers therein prior to or by the effective date of this
26 Decision.

2. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of a real estate licensee in the State of California; and

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

DATED: 1-17-02

ELLIOTT MAC LERNAN, Counsel for
the Department of Real Estate

I have read the Stipulation and Agreement, have discussed it with my counsel, 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 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.

- 5 -

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

4 3. That no final subsequent determination be made,
5 after hearing or upon stipulation, that cause for disciplinary
6 action occurred within two (2) years of the effective date of
7 this Decision. Should such a determination be made, the
8 Commissioner may, in her discretion, vacate and set aside the
9 stay order and reimpose all or a portion of the stayed
10 suspension. Should no such determination be made, the stay
11 imposed herein shall become permanent.

12
13 DATED: _____ ELLIOTT MAC LENNAN, Counsel for
14 the Department of Real Estate

15 * * *

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

Respondent 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 Respondent, to the Department at the following fax number: (213) 576-6917, Attention: Elliott Mac Lennan. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation and Agreement, that receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation and Agreement.

DATED:

1-18-02

DAVID S. TOYAMA, Respondent

DATED:

1-18-02

FRANK BUDA, ESQ.
Attorney for Respondent

* * *

The foregoing Stipulation and Agreement is hereby adopted as my Decision and shall become effective at 12 o'clock noon on _____.

IT IS SO ORDERED _____.

PAULA REDDISH ZINNEBANN
Real Estate Commissioner

1 Respondent can signify acceptance and approval of the
2 terms and conditions of this Stipulation and Agreement by faxing
3 a copy of its signature page, as actually signed by Respondent,
4 to the Department at the following fax number: (213) 576-6917,
5 Attention: Elliott Mac Lennan. Respondent agrees, acknowledges
6 and understands that by electronically sending to the Department
7 a fax copy of Respondent's actual signature as it appears on the
8 Stipulation and Agreement, that receipt of the faxed copy by the
9 Department shall be as binding on Respondent as if the Department
10 had received the original signed Stipulation and Agreement.
11

12 DATED: _____

DAVID S. TOYAMA, Respondent

13
14 DATED: _____

FRANK BUDA, ESQ.
Attorney for Respondent

15
16 * * *

17 The foregoing Stipulation and Agreement is hereby
18 adopted as my Decision and shall become effective at
19 _____
12 o'clock noon on February 20, 2002.

20 IT IS SO ORDERED

January 30, 2002.

21
22 PAULA REDDISH ZINNEMANN
Real Estate Commissioner

23
24
25 *Paula Reddish*
26
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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of) Case No. H-28711 LA
)
DAVID S. TOYAMA, individually)
and doing business as) OAH No. L-2000090271
)
California Community Mortgage)
and David Steven Realtors,)
_____) Respondent(s)

FILED
JAN 30 2001
DEPARTMENT OF REAL ESTATE

NOTICE OF CONTINUED 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, Suite 630, Los Angeles, CA 90013-1105 on TUESDAY, MARCH 27, 2001, 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 on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the 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.

DEPARTMENT OF REAL ESTATE

Dated: January 30, 2001

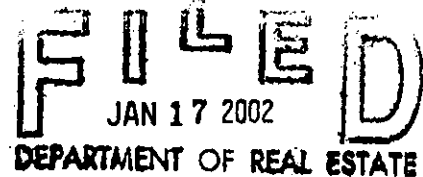
By

ELLIOTT MacLENNAN, Counsel

cc: David S. Toyama
Frank M. Buda, Esq.
Sacto.
OAH

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6082 (office)



By [Signature]

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of)

DRE No. H-28711 LA

DAVID S. TOYAMA, individually)
and doing business as California)
Community Mortgage and David)
Steven Realtors,)

OAH No. L-2000090271

FIRST AMENDED
ACCUSATION

Respondent.)

The First Amended Accusation amends the Accusation
filed on August 25, 2000, in this matter:

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against DAVID S. TOYAMA, individually and doing business as
California Community Mortgage and David Steven Realtors
("Respondent"), is informed and alleges as follows:

1.

The Complainant, Thomas McCrady, a Deputy Real Estate
Commissioner of the State of California, makes this Accusation
in her official capacity.

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code").

3.

At all times material herein, Respondent was licensed by the Department of Real Estate of the State of California ("Department") as a real estate broker.

4.

All further references to "Respondent", unless otherwise specified, include the party identified in Paragraph 2, and also includes the employees, agents and real estate licensees employed by or associated with said party, who at all times material herein were engaged in the furtherance of the business or operations of said party and who were acting within the course and scope of their authority, agency, or employment.

5.

At all times material herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Code Sections 10131(a) and 10131(d).

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6.

On or about May 16, 2000, the Department completed an examination of Respondent's books and records, pertaining to the real estate activities described in Paragraph 5, above, covering a period from approximately January 1, 1999 through April 30, 2000. Said examination revealed violations of the Code as set forth below.

7.

In the course of activities described in Paragraph 5, and during the examination period described in Paragraph 6, Respondent acted in violation of the Code in that, Respondent had undisclosed compensation pertaining to the "Yield Spread Premium" ("Premium") and the "Loan Processing Fee" earned in connection with Respondent's mortgage loan activities. The Premium was not disclosed in the Mortgage Loan Disclosure Statements/Good-Faith Estimates, provided, but not limited to the following borrowers: Raul and Carolina Miranda, Diane Kanski, Jose and Noemi Rodriguez and Gabriel and Maria Soliz.

8.

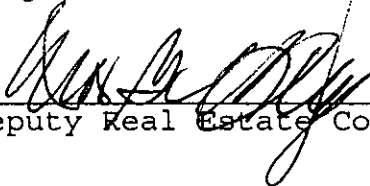
Respondent's conduct, acts and omissions as set forth in Paragraph 7, above, constitutes cause for the suspension or revocation of Respondent's real estate licenses and license rights under the provisions of Code Sections 10176(g) and/or 10177(g).

///

1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and, that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against all licenses and license rights of Respondent,
5 DAVID S. TOYAMA, individually and doing business as California
6 Community Mortgage and David Steven Realtors, under the Real
7 Estate Law (Part 1 of Division 4 of the Business and Professions
8 Code), and for such other and further relief as may be proper
9 under other applicable provisions of law.

10 Dated at Los Angeles, California

11 this 17th day of January, 2002.

12 
13 _____
14 Deputy Real Estate Commissioner
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24 cc: David S. Toyama
25 Thomas McCrady
26 Audit Section
27 Sacto.
OAH
JN

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of) Case No. H-28711 LA

DAVID S. TOYAMA, individually
and doing business as
California Community Mortgage
and David Steven Realtors,

) OAH No. L-2000090271

)
)
)
)
)
Respondent(s)

FILED
NOV 13 2000
DEPARTMENT OF REAL ESTATE

By 23

NOTICE OF CONTINUED 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, Suite 630, Los Angeles, CA 90013-1105 on TUESDAY, JANUARY 16, 2001, 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 on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the 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.

DEPARTMENT OF REAL ESTATE

Dated: November 13, 2000

By


DARLENE AVERETTA, Counsel

cc: David S. Toyama
Frank M. Buda, Esq.
Sacto.
OAH

SAC

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Accusation of) Case No. H-28711 LA
)
DAVID S. TOYAMA, individually) OAH No. L-2000090271
and doing business as)
California Community Mortgage)
and David Steven Realtors,)
Respondent(s)

FILED
SEP 21 2000
DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON ACCUSATION

By C3

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, Suite 630, Los Angeles, CA 90013-1105 on THURSDAY, NOVEMBER 16, 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 on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the 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.

DEPARTMENT OF REAL ESTATE

Dated: September 21, 2000

By

Darlene Averetta
DARLENE AVERETTA, Counsel

cc: David S. Toyama
/Sacto.
OAH

SAC

1 DARLENE AVERETT, Counsel
2 (SBN 159969)
3 Department of Real Estate
320 West 4th Street, Suite 350
Los Angeles, California 90013-1105
4 Telephone: (213) 576-6982
5 (Direct) (213) 576-6904

FILED
AUG 25 2000
DEPARTMENT OF REAL ESTATE

By C7

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

10 * * *
11 In the Matter of the Accusation of) NO. H-28711 LA
12 DAVID S. TOYAMA, individually)
13 and doing business as California) ACCUSATION
Community Mortgage and David)
14 Steven Realtors,)
Respondent.)

16 The Complainant, Thomas McCrady, a Deputy Real Estate
17 Commissioner of the State of California, for cause of Accusation
18 against DAVID S. TOYAMA, individually and doing business as
19 California Community Mortgage and David Steven Realtors
20 ("Respondent"), is informed and alleges as follows:

21 1.

22 The Complainant, Thomas McCrady, a Deputy Real Estate
23 Commissioner of the State of California, makes this Accusation
24 in his official capacity.

25 ///
26 ///
27 ///
///

2.

Respondent is presently licensed and/or has license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code ("Code").

3.

At all times material herein, Respondent was licensed by the Department of Real Estate of the State of California ("Department") as a real estate broker.

4.

All further references to "Respondent", unless otherwise specified, include the party identified in Paragraph 2, and also includes the employees, agents and real estate licensees employed by or associated with said party, who at all times material herein were engaged in the furtherance of the business or operations of said party and who were acting within the course and scope of their authority, agency, or employment.

5.

At all times material herein, Respondent engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker in the State of California, within the meaning of Code Sections 10131(a) and 10131(d).

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On or about May 16, 2000, the Department completed an examination of Respondent's books and records, pertaining to the real estate activities described in Paragraph 5, above, covering a period from approximately January 1, 1999 through April 30, 2000. Said examination revealed violations of the Code as set forth below.

7.

In the course of activities described in Paragraph 5, and during the examination period described in Paragraph 6, Respondent acted in violation of the Code in that, Respondent had undisclosed compensation pertaining to the "Yield Spread Premium" ("Premium") and the "Loan Processing Fee" earned in connection with Respondent's mortgage loan activities. The Premium was not disclosed in the Mortgage Loan Disclosure Statements/Good-Faith Estimates, provided, but not limited to the following borrowers: Raul and Carolina Miranda, Diane Kanski, Jose and Noemi Rodriguez and Gabriel and Maria Soliz.

8.

Respondent's conduct, acts and omissions as set forth in Paragraph 7, above, constitutes cause for the suspension or revocation of Respondent's real estate licenses and license rights under the provisions of Code Section 10176(g).

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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 Respondent, DAVID S. TOYAMA, individually and doing business as California Community Mortgage and David Steven Realtors, 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 25th day of August, 2000.

THOMAS MCCRADY
Deputy Real Estate Commissioner

cc: David S. Toyama
Thomas McCrady
LA Audit Section/J. Reyes
Sacto.
JN