

FILED
APR 2 2001

DEPARTMENT OF REAL ESTATE

By Laura B. Cron

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)

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-28864 LA

DESERT EMPIRE MORTGAGE CORPORATION
INC. and, SCOTT J. SIMMONS,
individually and as designated
Officer of Desert Empire Mortgage
Corporation Inc.,

STIPULATION
AND
AGREEMENT

Respondents.

It is hereby stipulated by and between DESERT EMPIRE MORTGAGE CORPORATION INC. and SCOTT J. SIMMONS, individually and as designated officer of Desert Empire Mortgage Corporation, Inc. (sometimes collectively referred to as "Respondents"), represented by Merele D. Chapman, 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 November 9, 2000, in this matter:

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

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. Respondents have received, read and understand 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. Respondents 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 Respondents hereby freely and voluntarily withdraw said Notice of
14 Defense. Respondents acknowledge that they understand that by
15 withdrawing said Notice of Defense they thereby waive their right
16 to 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 they will waive other rights
19 afforded to them in connection with the hearing such as the right
20 to present evidence in their 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, Respondents choose not to contest these allegations, but
25 to remain silent and understand 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 Respondents 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 the Desist and Refrain Order, and is made for
10 the sole purpose of reaching an agreed disposition of this
11 proceeding without a hearing. The decision of Respondents not to
12 contest the allegations is made solely for the purpose of
13 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
18 Estate Commissioner may adopt this Stipulation as her Decision in
19 this matter thereby imposing the penalty and sanctions on
20 Respondents real estate licenses and license rights as set forth
21 in the "Order" herein below. In the event that the Commissioner,
22 in her discretion, does not adopt the Stipulation, it shall be
23 void and of no effect and Respondents shall retain the right to a
24 hearing and proceeding on the Accusation under the provisions of
25 the APA and shall not be bound by any stipulation or waiver made
26 herein.

1 7. The Order or any subsequent Order of the Real
2 Estate Commissioner made pursuant to this Stipulation shall not
3 constitute an estoppel, merger or bar to any further
4 administrative or civil proceedings by the Department of Real
5 Estate with respect to any matters which were not specifically
6 alleged to be causes for Accusation in this proceeding but do
7 constitute a bar, estoppel and merger as to any allegations
8 actually contained in the Accusation against Respondents herein.

9 8. Respondents understand that by agreeing to this
10 Stipulation, they agree to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of this audit is \$1,432.

12 9. Respondents have received, read, and understand the
13 "Notice concerning costs of Subsequent Audit". Respondents
14 further understand that by agreeing to this Stipulation, the
15 findings set forth below in the Determination of Issues become
16 final, and the commissioner may charge Respondent for the cost of
17 any subsequent audit conducted pursuant to Business and
18 Professions Code Section 10148 to determine if the violations
19 have been corrected. The maximum cost of the subsequent audit
20 will not exceed \$1,432.

21 DETERMINATION OF ISSUES

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

25 I

26 The conduct of DESERT EMPIRE MORTGAGE CORPORATION INC.
27 as described in Paragraph 4, is in violation of Section 10145 of

1 the Business and Professions Code ("Code") and Sections 2832.1,
2 2832, 2831.2 and 2834 of Title 10, Chapter 6 of the California
3 Code of Regulations and is a basis for the suspension or
4 revocation of Respondent's license pursuant to Section 10177(d)
5 of the Code.

6 II

7 The conduct of SCOTT J. SIMMONS, as described in
8 Paragraph 4, constitutes a failure to exercise reasonable
9 supervision over the activities of Desert Empire Corporation
10 Inc., for which a real estate license is required. This conduct
11 is a basis for the suspension or revocation of Respondent's
12 broker license pursuant to Section 10177(h) of the Code and is a
13 basis for the suspension or revocation of Respondents' license
14 and license rights as a violation of the Real Estate Law pursuant
15 to Section 10177(d) of the Code

16 ORDER

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

19 All licenses and licensing rights of Respondents
20 DESERT EMPIRE MORTGAGE CORPORATION INC. and SCOTT J. SIMMONS
21 under the Real Estate Law are suspended for a period of ninety
22 (90) days from the effective date of this Decision; provided,
23 however, that sixty (60) days of said suspension shall be stayed
24 for two (2) years upon the following terms and conditions:

25 1. Respondents shall obey all laws, rules and
26 regulations governing the rights, duties and responsibilities
27

1 of a real estate licensee in the State of California.

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

10 3. The initial thirty (30) day portion of said ninety
11 (90) day suspension shall commence on the effective date of this
12 Decision; provided, however, that if Respondents petition, said
13 suspension shall be stayed upon condition that:

14 (a) Each Respondent pays a monetary penalty
15 pursuant to Section 10175.2 of the Business and Professions Code
16 of \$500 for each Respondent, or \$1,000 in total for both
17 Respondents.

18 (b) Said payment shall be in the form of a
19 cashier's check or certified check made payable to the Recovery
20 Account of the Real Estate Fund. Said check must be received
21 by the Department prior to the effective date of the Decision
22 in this matter.

23 (c) No further cause for disciplinary action
24 against the real estate license of Respondents occur within two
25 (2) years from the effective date of the Decision in this matter.

26 (d) If Respondents fail to pay the monetary
27 penalty in accordance with the terms and conditions of the

1 Decision, the Commissioner may, without a hearing, order the
2 immediate execution of all or any part of the stayed suspension
3 in which event Respondents shall not be entitled to any repayment
4 nor credit, prorated or otherwise, for money paid to the
5 Department under the terms of this Decision.

6 (e) If Respondents pay the monetary penalty and
7 if no further cause for disciplinary action against the real
8 estate licenses of Respondents occur within two (2) years from
9 the effective date of the Decision, the stay hereby granted shall
10 become permanent.

11 4. Pursuant to Section 10148 of the Business and
12 Professions Code, Respondents shall jointly or severally, pay the
13 Commissioner's reasonable cost for (a) the audit which
14 led to this disciplinary action, and (b) a subsequent audit
15 to determine if Respondents are now in compliance with the
16 Real Estate Law. The cost of the audit which led to this
17 disciplinary action is \$1,432. In calculating the amount
18 of the Commissioner's reasonable cost for the subsequent audit,
19 the Commissioner may use the estimated average hourly salary for
20 all persons performing audits of real estate brokers, and shall
21 include an allocation for travel costs including mileage, time to
22 and from the auditor's place of work and per diem. Said amount
23 for the subsequent audit shall not exceed \$1,432.

24 Respondents shall pay the cost of both audits within
25 sixty (60) days of receiving an invoice from the Commissioner
26 detailing the activities performed during the audit and the
27 amount of time spent performing those activities. The

1 Commissioner may in her discretion, vacate and set aside any stay
2 order, if payment is not timely made as provided for herein, or
3 as provided for in a subsequent agreement between
4 the Respondents and the Commissioner. The vacation and the
5 set aside of the stay shall remain in effect until payment
6 is made in full, or until Respondents enter into an agreement
7 satisfactory to the Commissioner to provide for payment.

8 Should no order vacating the stay be issued, the stay
9 imposed herein shall become permanent.

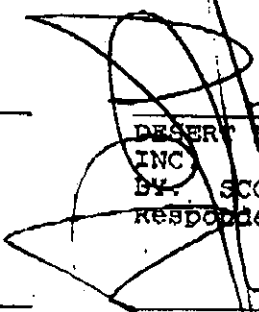
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12 DATED: 3-13-01

E. J. W.
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

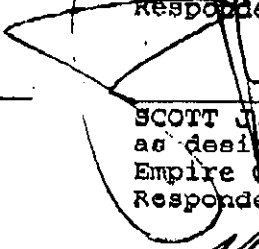
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14 * * *

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

1 Respondents 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 Respondents,
4 to the Department at the following telephone/fax number: (213)
5 576-6917, Attention: Elliott Mac Lennan. Respondents agree,
6 acknowledge and understand that by electronically sending to the
7 Department a fax copy of Respondents' actual signatures as they
8 appear on the Stipulation and Agreement, that receipt of the
9 faxed copy by the Department shall be as binding on Respondents
10 as if the Department had received the original signed Stipulation
11 and Agreement.

12
13 DATED: 3/13/01

DESERT EMPIRE MORTGAGE CORPORATION
INC.
BY: SCOTT J. SIMMONS,
Respondent

16
17 DATED: 3/13/01

SCOTT J. SIMMONS, individually and
as designated officer of Desert
Empire Corporation, Inc.,
Respondent

20
21 DATED: 3/13/2001

MERLE D. CHAPMAN, Attorney for
Respondents

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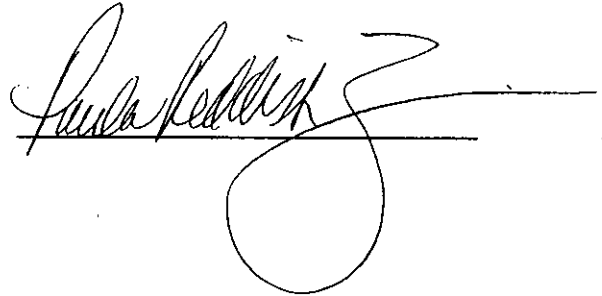
1 * * *

2 The foregoing Stipulation and Agreement is hereby
3 adopted as my Decision and Order and shall become effective at 12
4 o'clock noon on April 23, 2001.

5 IT IS SO ORDERED

March 28, 2001.

6
7 PAULA REDDISH ZINNEMANN
8 Real Estate Commissioner

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BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

FILE
JAN 10 2001
DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of) Case No. H-28864 LA
) OAH No. L-2000110445
DESERT EMPIRE MORTGAGE)
CORPORATION, INC., et al.,)
)
)
)
Respondent(s))

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 MARCH 20, 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 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: January 10, 2001

DEPARTMENT OF REAL ESTATE

By:

ELLIOTT MAC LENNAN
ELLIOTT MAC LENNAN, Counsel

cc: Desert Empire Mortgage Corporation, Inc.
Scott J. Simmons
Merele D. Chapman, Esq.
Sacto, OAH

RE 501 (Rev. 8/97) EM:lbo

ELLIOTT MAC LENNAN, Counsel
State Bar No. 66674
Department of Real Estate
320 West Fourth Street, Suite 350
Los Angeles, California 90013-1105
(213) 576-6911

FILED
NOV 9 2000
DEPARTMENT OF REAL ESTATE
By Laura B. Orona

DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * * *

In the Matter of the Accusation of) NO. H-28864 LA
)
DESERT EMPIRE MORTGAGE) A C C U S A T I O N
CORPORATION INC., and)
SCOTT J. SIMMONS, individually)
and as designated officer of)
Desert Empire Mortgage)
Corporation Inc.)
Respondents.)

The Complainant, Thomas McCrady, a Deputy Real
Estate Commissioner of the State of California, for cause of
Accusation against DESERT EMPIRE MORTGAGE CORPORATION INC. and
SCOTT J. SIMMONS, individually and as designated officer of
Desert Empire Mortgage Corporation Inc., alleges as follows:

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1 The Complainant, Thomas McCrady, acting in his
2 official capacity as a Deputy Real Estate Commissioner of the
3 State of California makes this Accusation against DESERT
4 EMPIRE MORTGAGE CORPORATION INC. (DEMCI) and SCOTT J. SIMMONS
5 (SIMMONS).

6 2

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

11 3

12 DEMCI and SIMMONS, (hereinafter referred to as
13 respondents) are presently licensed and/or have license rights
14 under the Real Estate Law (Part 1 of Division 4 of the
15 Business and Professions Code, hereinafter "Code").

16 4

17 From October 29, 1987 to date, SIMMONS was licensed
18 by the Department as designated officer of DEMCI to qualify
19 DEMCI and to act for DEMCI as a real estate broker and, as
20 provided by Section 10159.2 of the Code, was responsible for
21 the supervision and control of the activities conducted on
22 behalf of DEMCI by its officers, managers and employees as
23 necessary to secure full compliance with the provisions of the
24 Real Estate Law including the supervision of the salespersons
25 licensed to the corporation in the performance of acts for
26 which a real estate license is required. SIMMONS was
27 originally licensed as a real estate broker on



1 November 7, 1986.

2 5

3 Whenever reference is made in an allegation in the
4 Accusation to an act or omission of DEMCI such allegation
5 shall be deemed to mean that the officers, directors,
6 managers, employees, agents and real estate licensees employed
7 by or associated with DEMCI including SIMMONS committed such
8 act or omission while engaged in the furtherance of its
9 business or operation and while acting within the course and
10 scope of its corporate authority, agency and employment.

11 6

12 At all times mentioned, in the City of Palm Springs,
13 County of Riverside, DEMCI and SIMMONS acted as real estate
14 brokers within meaning of Section 10131(d) of the Code in that
15 they acted in the capacity of mortgage and loan brokers,
16 including soliciting borrowers and lenders and negotiating and
17 servicing loans on real property for or in expectation of
18 compensation.

19 7

20 On June 27, 2000, the Department completed an audit
21 examination of the books and records of DEMCI pertaining to
22 its mortgage and loan activities requiring a real estate
23 license as described in Paragraph 6. The purpose of the audit
24 was to determine if DEMCI had complied with a Corrective
25 Action Letter issued by the Department on June 26, 1998. The
26 audit examination covered a period of time beginning on
27 January 1, 1999 to May 30, 2000. The audit examination
revealed violations of the Code and the Regulations as set



1 forth in the following paragraphs.

2
3 8

4 At all times mentioned, in connection with the
5 activities described in Paragraph 6, above, DEMCI accepted or
6 received funds in trust (trust funds) from or on behalf of
7 borrowers and lenders and thereafter made disposition of such
8 funds. Respondent maintained the following trust account
9 during the audit period into which were deposited certain of
10 these funds at:

11 "Desert Empire Mortgage Corporation Trust Account
12 Account No. 879-009315-3"
13 Washington Mutual
14 Palm Springs, CA 92262

15 9

16 With respect to the trust funds referred to in
17 Paragraph 8, it is alleged that DEMCI:

18 (a) Permitted, allowed or caused the disbursement
19 of trust funds from the appraisal and credit fees trust
20 account where the disbursement of funds reduced the total of
21 aggregate funds in the trust account, to an amount which, on
22 May 31, 2000, was \$1,982.56 less than the existing aggregate
23 trust fund liability of DEMCI to every principal who was an
24 owner of said funds, without first obtaining the prior written
25 consent of the owners of said funds, as required by Section
26 10145 of the Code and Section 2832.1 of the Regulations;

27 (b) Failed to perform a monthly reconciliation of
the balance of all separate beneficiary or transaction records
maintained pursuant to Section 2831.1 of the Regulations with



1 the record of all trust funds received and disbursed by the
2 escrow trust account, as required by Section 2831.2 of the
3 Regulations;

4 (c) Failed to place funds, including appraisal and
5 credit fees, accepted on behalf of another into the hands of
6 the owner of the funds, a neutral escrow depository or into a
7 trust fund account in the name of the trustee at a bank or
8 other financial institution not later than three business days
9 following receipt of the funds by the broker or by the
10 broker's salesperson, in violation of Regulation 2832;

11 (d) Permitted an unlicensed person who was not
12 bonded, Denise Popejoy, a loan processor at DEMCI, to be an
13 authorized signatory on the trust account, in violation of
14 Section 2834 of the Regulations; and

15 (e) Failed to provide and/or maintain a statement
16 in writing containing all the information required by Section
17 10241 of the Code to various borrowers including but not
18 limited to Goulding/Hoganson, Sharon Maguire and Andrew Lintz,
19 before said borrowers became obligated to perform under the
20 terms of their loans, in violation of Section 10240 of the
21 Code and Section 2840 of the Regulations.

22 10

23 The conduct of Respondent DEMCI, described in
24 Paragraph 9, above, violated the Code and the Regulations as
25 set forth below:

26 PARAGRAPH

PROVISIONS VIOLATED

27 9(a)

Section 10145 of the Code, and

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Section 2832.1 of the Regulations

9(b) Section 10145 of the Code, and
Section 2831.2 of the Regulations

9(c) Section 10145 of the Code, and
Section 2832 of the Regulations

9(d) Section 10145 of the Code, and
Section 2834 of the Regulations

9(e) Section 10240 of the Code
Section 2840 of the Regulations

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

11

The overall conduct of DEMCI and SIMMONS constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of Respondents under the provisions of Section 10177(g) of the Code.

12

The conduct of respondent SIMMONS, as alleged above, as the responsible broker, by allowing and permitting respondent DEMCI to engage in the conduct specified in paragraph above, subjects his real estate licenses and license

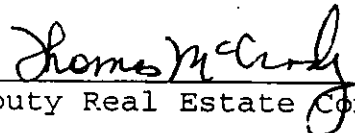


1 rights to suspension or revocation pursuant to Sections
2 10177(d) and 10177(h) of the Code.

3
4 WHEREFORE, complainant prays that a hearing be
5 conducted on the allegations of this Accusation and, that upon
6 proof thereof, a decision be rendered imposing disciplinary
7 action against all licenses and licensing rights of
8 respondents DESERT EMPIRE MORTGAGE CORPORATION INC.

9 and SCOTT J. SIMMONS, individually and as
10 designated officer of Desert Empire Mortgage Corporation Inc.,
11 under the Real Estate Law (Part 1 of Division 4 of the
12 Business and Professions Code) and for such other and further
13 relief as may be proper under other applicable provisions of
14 law.

15 Dated at Los Angeles, California this
16 9th day of November, 2000.

17 
18 Deputy Real Estate Commissioner

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25 cc: Desert Empire Mortgage Corporation Inc.
26 Scott J. Simmons
27 Sacto.
LK
TM
Audit Section

