

fact
1 ELLIOTT MAC LENNAN, SBN 66674
2 Department of Real Estate
3 320 West 4th Street, Ste. 350
4 Los Angeles, California 90013-1105

5 Telephone: (213) 576-6911 (direct)
6 -or- (213) 576-6982 (office)
7

FILED

SEP 18 2007

DEPARTMENT OF REAL ESTATE

BY: ARL

8
9 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of) No. H-33879 LA
13)
14 PRIDEMARK MORTGAGE & INVESTMENT)
15 INC., a corporation; and SON)
16 KHANH TRINH, individually and as)
17 designated officer of Pridemark)
18 Mortgage & Investment Inc.,)
19 Respondents,)
20)
21)
22)
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27)

STIPULATION
AND
AGREEMENT

17 It is hereby stipulated by and between Respondents
18 PRIDEMARK MORTGAGE & INVESTMENT INC., a corporate real estate
19 broker, and SON KHANH TRINH, individually and as designated
20 officer of Pridemark Mortgage & Investment Inc. (sometimes
21 collectively referred to as "Respondents"), and their attorney of
22 record, Tang Kiet, Esq., and the Complainant, acting by and
23 through Elliott Mac Lennan, Counsel for the Department of Real
24 Estate, as follows for the purpose of settling and disposing of
25 the Accusation ("Accusation") filed on April 5, 2007, in this
26 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 timely filed a Notice of Defense
13 pursuant to Section 11506 of the Government Code for the purpose
14 of requesting a hearing on the allegations in the Accusation.
15 Respondents hereby freely and voluntarily withdraw said Notice of
16 Defense. Respondents acknowledge that they understand that by
17 withdrawing said Notice of Defense they thereby waive their right
18 to require the Commissioner to prove the allegations in the
19 Accusation at a contested hearing held in accordance with the
20 provisions of the APA and that they will waive other rights
21 afforded to them in connection with the hearing such as the right
22 to present evidence in their defense and the right to cross-
23 examine witnesses.
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25 4. This Stipulation is based on the factual
26 allegations contained in the Accusation. In the interest of
27

1 expedience and economy, Respondents choose not to contest these
2 allegations, but to remain silent and understand that, as a
3 result thereof, these factual allegations, without being admitted
4 or denied, will serve as a prima facie basis for the disciplinary
5 action stipulated to herein. The Real Estate Commissioner shall
6 not be required to provide further evidence to prove said factual
7 allegations.

8 5. This Stipulation and Respondents' decision not to
9 contest the Accusation is made for the purpose of reaching an
10 agreed disposition of this proceeding and is expressly limited to
11 this proceeding and any other proceeding or case in which the
12 Department of Real Estate ("Department"), the state or federal
13 government, or any agency of this state, another state or federal
14 government is involved, and otherwise shall not be admissible in
15 any other criminal or civil proceedings.

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

9 8. Respondents understand that by agreeing to this
10 Stipulation, Respondents agree to pay, pursuant to Business and
11 Professions Code Section 10148, the cost of audit which led to
12 this disciplinary action. The amount of said cost for the audit
13 is \$3,254.45 (Audit Report LA 050221).

14 9. Respondents have received, read, and understand the
15 "Notice Concerning Costs of Subsequent Audit". Respondents
16 further understand that by agreeing to this Stipulation, the
17 findings set forth below in the Determination of Issues become
18 final, and the Commissioner may charge Respondents for the cost
19 of any subsequent audit conducted pursuant to Business and
20 Professions Code Section 10148 to determine if the violations
21 have been corrected. The maximum cost of the subsequent audit
22 will not exceed \$3,254.45.

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DETERMINATION OF ISSUES

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

I.

The conduct of PRIDEMARK MORTGAGE & INVESTMENT INC., as set forth in the Accusation, is in violation of Sections 10145 and 10240 of the Business and Professions Code ("Code") and Sections 2831, 2832(d) and 2834 of Title 10, Chapter 6 of the California Code of Regulations ("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 Code Section 10177(d).

II.

The conduct, acts or omissions of SON KHANH TRINH, as described in Paragraph 4, constitutes a failure to keep Pridemark Mortgage & Investment Inc., above, in compliance with the Real Estate Law during the time that he was the officer designated by a corporate broker licensee in violation of Section 10159.2 of the Code. This conduct is a basis for the suspension or revocation of Respondent's license pursuant to Code Section 10177(h).

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents
PRIDEMARK MORTGAGE & INVESTMENT INC., as and SON KHANH TRINH
under the Real Estate Law are suspended for a period of sixty
days from the effective date of this Decision;

A1. Provided, however, that thirty days of said
suspension (or a portion thereof) shall be stayed upon the
following terms and conditions:

2. Respondents each pay a monetary penalty pursuant to
Section 10175.2 of the Business and Professions Code at the rate
of \$66.66 per day for each day of the suspension for a monetary
penalty of \$2,000 each or a total monetary penalty of \$4,000.

3. Said payment shall be in the form of a cashier's
check or certified check made payable to the Recovery Account of
the Real Estate Fund. Said check must be received by the
Department prior to the effective date of the Decision in this
matter.

4. No further cause for disciplinary action against
the real estate licenses of Respondents occurs within two years
from the effective date of the Decision in this matter.

5. If Respondents fail to pay the monetary penalty in
accordance with the terms of the Decision, the Commissioner may,
without a hearing, order the immediate execution of all or any

1 part of the stayed suspension, in which event the Respondents
2 shall not be entitled to any repayment nor credit, prorated or
3 otherwise, for money paid to the Department under the terms of
4 this Decision.

5 6. If Respondents pay the monetary penalty and if no
6 further cause for disciplinary action against the real estate
7 license of Respondent occurs within two years from the effective
8 date of the Decision, the stay hereby granted shall become
9 permanent

10 B.1 The remaining thirty days of the sixty day
11 suspension shall be stayed for two years upon the following terms
12 and conditions:

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

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

Pursuant to Section 10148 of the Business and Professions Code, Respondents PRIDEMARK MORTGAGE & INVESTMENT INC. and SON KHANH TRINH shall pay the Commissioner's reasonable cost for (a) the audit which led to this disciplinary action (b) a subsequent audit to determine if Respondents are now in compliance with the Real Estate Law. The cost of the audit which led to this disciplinary action is \$3,254.45. In calculating the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated average hourly salary for all persons performing audits of real estate brokers, and shall include an allocation for travel time to and from the auditor's place of work. Said amount for the prior and subsequent audits shall not exceed \$6,508.90.

Respondents shall pay such cost within 60 days of receiving an invoice from the Commissioner detailing the activities performed during the audit and the amount of time spent performing those activities.

The Commissioner may suspend the license of Respondents pending a hearing held in accordance with Section 11500, et seq., of the Government Code, if payment is not timely made as provided for herein, or as provided for in a subsequent agreement between the Respondent and the Commissioner. The suspension shall remain in effect until payment is made in full or until Respondents enter into an agreement satisfactory to the Commissioner to provide for payment, or until a decision providing otherwise is

1 adopted following a hearing held pursuant to this condition.

2 III.

3 All licenses and licensing rights of Respondent SON
4 KHANH TRINH are indefinitely suspended unless or until Respondent
5 provides proof satisfactory to the Commissioner, of having taken
6 and successfully completed the continuing education course on
7 trust fund accounting and handling specified in paragraph (3) of
8 subdivision (a) of Section 10170.5 of the Business and
9 Professions Code. Proof of satisfaction of this requirement
10 includes evidence that respondent has successfully completed the
11 trust fund account and handling continuing education course
12 within 120 days prior to the effective date of the Decision in
13 this matter.

14 IV

15 Respondent SON KHANH TRINH shall within six months from
16 the effective date of the restricted license, take and pass the
17 Professional Responsibility Examination administered by the
18 Department including the payment of the appropriate examination
19 fee. If Respondent fails to satisfy this condition, the
20 Commissioner may order suspension of Respondent's license until
21 respondent passes the examination.
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24
25 DATED: 7-13-07

ELL
26 ELLIOTT MAC LENNAN, Counsel for
27 the Department of Real Estate

* * *

EXECUTION OF THE STIPULATION

We have read the Stipulation and have discussed it with our counsel, 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 of requiring 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.

MAILING AND FACSIMILE

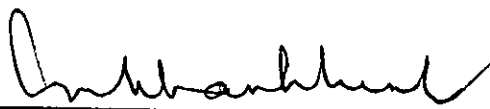
Respondent(s) (1) shall mail the original signed signature page of the stipulation herein to Elliott Mac Lennan: Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105. Additionally, Respondent(s) shall also (2) facsimile a copy of signed signature page, to the Department at the following telephone/fax number: (213) 576-6917, Attention: Elliott Mac Lennan.

A facsimile constitutes acceptance and approval of the terms and conditions of this stipulation. Respondent(s) agrees, acknowledges and understands that by electronically sending to

1 the Department a facsimile copy of Respondent's actual signature
2 as it appears on the stipulation, that receipt of the facsimile
3 copy by the Department shall be as binding on Respondent(s) as if
4 the Department had received the original signed stipulation.

5
6 DATED:

6/15/07


PRIDEMARK MORTGAGE & INVESTMENT
INC., a corporate real estate
broker,
BY: SON KHANH TRINH, D.O.,
Respondent

11
12 DATED:

6/15/07


SON KHANH TRINH individually and as
designated officer of Pridemark
Mortgage & Investment Inc.,
Respondent

16
17 DATED:

6/15/07


TANG KIET, ESQ.
Attorney for Respondents

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IT IS SO ORDERED _____, 2007.



*Asks
file*

FILED
APR - 5 2007
DEPARTMENT OF REAL ESTATE

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 K. Wiedersholt

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of	)	No. H-33879 LA
	)	
PRIDEMARK MORTGAGE & INVESTMENT	)	<u>A C C U S A T I O N</u>
INC.; and SON KHANH TRINH,	)	
individually and as designated	)	
officer of Pridemark Mortgage &	)	
Investment Inc.,	)	
	)	
Respondents.	)	

The Complainant, Janice Waddell, a Deputy Real Estate Commissioner of the State of California, for cause of Accusation against PRIDEMARK MORTGAGE & INVESTMENT INC. and SON KHANH TRINH, individually and as designated officer of Pridemark Mortgage & Investment Inc., alleges as follows:

1.

The Complainant, Janice Waddell, acting in her official capacity as a Deputy Real Estate Commissioner of the State of California, makes this Accusation against PRIDEMARK MORTGAGE & INVESTMENT INC. and SON KHANH TRINH.

2.

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.

LICENSE HISTORY

3.

A. At all times mentioned, PRIDEMARK MORTGAGE & INVESTMENT INC. ("PRIDEMARK") and SON KHANH TRINH ("TRINH") were licensed or had license rights issued by the Department of Real Estate ("Department") as real estate brokers.

B. At all times mentioned, PRIDEMARK was licensed by the Department as a corporate real estate broker by and through TRINH, as the designated officer and broker responsible, pursuant to Code Section 10159.2 for supervising the activities requiring a real estate license conducted on behalf PRIDEMARK of by PRIDEMARK's officers, agents and employees, including TRINH. PRIDEMARK was originally licensed on March 11, 2005. PRIDEMARK is the successor-in-interest to Pride Mark International Inc. Pride Mark International Inc. was originally licensed on August 12, 2002 and expired on August 12, 2006. TRINH was originally licensed as a real estate broker on January 3, 2002.

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BROKERAGE

PRIDEMARK MORTGAGE & INVESTMENT INC.

4.

At all times mentioned, in the City of Westminster, County of Orange, PRIDEMARK and TRINH acted as real estate brokers conducting licensed activities within the meaning of:

A. Code Section 10131(a) by operating a residential resale brokerage.

B. Code Section 10131(b) by operating a property management brokerage; and

C. Code Section 10131(d) by operating a mortgage and loan brokerage.

AUDIT EXAMINATION

PRIDEMARK MORTGAGE & INVESTMENT INC.

5.

On July 13, 2006, the Department completed an audit examination of the books and records of PRIDEMARK pertaining to the mortgage and loan activities described in Paragraph 4, that require a real estate license. The audit examination covered a period of time beginning on April 1, 2004 to May 31, 2006. The audit examination revealed violations of the Code and the Regulations as set forth in the following paragraphs, and more fully discussed in Audit Report LA 050221 and the exhibits and workpapers attached to said audit report.

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TRUST ACCOUNTS

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, PRIDEMARK accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties to transactions handled by PRIDEMARK including buyers and sellers, tenants and owners, borrowers and lenders and thereafter made deposits and or disbursements of such funds. From time to time herein mentioned during the audit period, said trust funds were deposited and/or maintained by PRIDEMARK in the bank accounts, as follows:

"Pridemark Mortgage & Investment Inc.
Property Management Trust Account
Account No. 003-332632"
Center Bank
Garden Grove, California ("B/A #1)

"Pridemark Mortgage & Investment Inc. Trust Account
Account No. 100000611"
First Vietnamese American Bank
Westminister, California ("B/A #2)

"Pridemark Mortgage & Investment Inc.
Escrow Division Trust Account
Account No. 001773194"
Mellon 1st Business Bank
Westminister, California ("B/A #3)
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1 VIOLATIONS OF THE REAL ESTATE LAW

2 7.

3 In the course of activities described in Paragraphs 4
4 and 6, above, and during the examination period described in
5 Paragraph 5, Respondents PRIDEMARK and TRINH, as indicated, acted
6 in violation of the Code and the Regulations in that they:

7 (a) Failed to place trust funds, including credit
8 report and appraisal fees, accepted on behalf of another into the
9 hands of the owner of the funds, a neutral escrow depository or
10 into a trust fund account in the name of the trustee at a bank or
11 other financial institution not later than three business days
12 following receipt of the funds by the broker or by the broker's
13 salesperson, as required by Code Section 10145 and Regulation
14 2832(d). PRIDEMARK and TRINH failed to deposit into a trust
15 account credit report and appraisal fees received through the
16 close of escrow made payable to PRIDEMARK.

17 (b) Mixed and commingled trust funds and personal funds
18 by depositing appraisal and credit report fees received from
19 escrow into PRIDEMARK's general operating account and issuing
20 checks therefrom to the appraisers or credit companies after the
21 escrow checks were deposited, in violation of Code Section
22 10176(e).

23 (c) Permitted and/or caused the disbursement of trust
24 funds to credit report companies on the representation that these
25 amounts were needed to pay for credit report fees, which payments
26
27

1 exceeded the actual costs of these services. Respondents did not
2 disclose these "mark-ups" to borrower-beneficiaries Loan La
3 (35/06) and Joanne Tran (76/05) nor did PRIDEMARK and TRINH
4 obtain these beneficiaries consent to these "mark-ups".
5 Respondents PRIDEMARK and TRINH retained the difference between
6 the amounts paid and the actual costs of the services, in
7 violation of Code Section 10176(a) and 10176(g).

8 (d) Failed to maintain an adequate control record in
9 the form of a columnar record in chronological order of trust
10 funds received for B/A #2 and B/A #3, for earnest money deposits,
11 as required by Code Section 10145 and Regulation 2831.

12 (e) Permitted Jeff Phung, an unlicensed and unbonded
13 person, to be authorized signatories on B/A #1, in violation of
14 Code Section 10145 and Regulation 2834; and

15 (f) Failed to provide, maintain or retain a true and
16 correct copy of a Department of Real Estate approved Mortgage
17 Loan Disclosure Statement signed by the broker for borrowers Mong
18 Van Dac Tran, Anh Dao Thi and Diep Vo, in violation of Code
19 Section 10240 and Regulation 2840.
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8.

The conduct of Respondents PRIDEMARK and TRINH, described in Paragraph 7, above, violated the Code and the Regulations as set forth below:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
7(a)	Code Section 10145 and Regulation 2832(d)
7(b)	Code Section 10176(e)
7(c)	Code Section 10176(a) and 10176(g)
7(d)	Code Section 10145 and Regulation 2831
7(e)	Code Section 10145 and Regulation 2834
7(f)	Code Section 10240 and Regulation 2840

The foregoing violations constitutes cause for the suspension or revocation of the real estate license and license rights of PRIDEMARK and TRINH, under the provisions of Code Sections, 10176(a), 10176(e) and 10176(g), 10177(d) and/or 10177(g).

NEGLIGENCE

9.

The overall conduct of Respondents PRIDEMARK and TRINH constitutes negligence or incompetence. This conduct and violation are cause for the suspension or revocation of the real estate license and license rights of said Respondents pursuant to Code Section 10177(g).

SUPERVISION AND COMPLIANCE

10.

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

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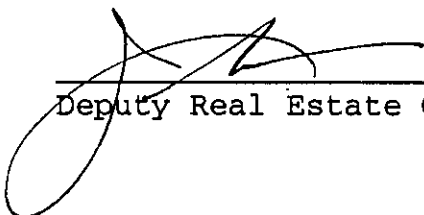
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondents
5 PRIDEMARK MORTGAGE & INVESTMENT INC. and SON KHANH TRINH, under
6 the Real Estate Law (Part 1 of Division 4 of the Business and
7 Professions Code) and for such other and further relief as may be
8 proper under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this *3 April 2007*

11 
12 Deputy Real Estate Commissioner
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24 cc: Pridemark Mortgage & Investment Inc.
25 c/o Son Khanh Trinh D.O.
26 Janice Waddell
27 Sacto
Audits - Dorcas Cheng
PH