



1 paying for the total cost of the audit in the amount of  
2 \$6,556.30.

3 NOW, THEREFORE, IT IS ORDERED under that the real  
4 estate broker license heretofore issued to Respondent and the  
5 exercise of any privileges thereunder are hereby suspended until  
6 such time as Respondent provides proof satisfactory to the  
7 Department of having paid for the audit referred to above or  
8 pending final determination made after hearing (see "Hearing  
9 Rights" set forth below).

10 IT IS FURTHER ORDERED that all license certificates and  
11 identification cards issued by the Department of Real Estate  
12 which are in the possession of Respondent be immediately  
13 surrendered by personal delivery or by mailing in the enclosed  
14 self-addressed envelope to:

15 DEPARTMENT OF REAL ESTATE  
16 Attention: Flag Section  
17 Post Office Box 187000  
18 Sacramento, CA 95818-7000

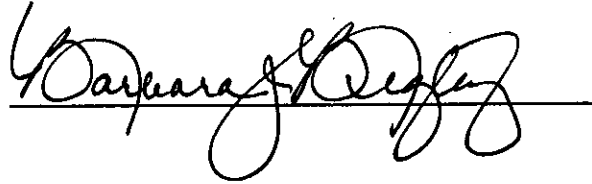
18 HEARING RIGHTS: you have the right to a hearing to  
19 contest the Commissioner's determination that you are in  
20 violation of the condition that you pay for the audit. If you  
21 desire a hearing, you must submit a written request. The request  
22 may be in any form as long as it is in writing and indicates that  
23 you want a hearing. Unless a written request for a hearing,  
24 signed by or on behalf of you, is delivered or mailed to the  
25 Department at 320 West Fourth Street, Suite 350, Los Angeles,  
26 California 90013, within 20 days after the date that this Order  
27

1 was mailed to or served on you, the Department will not be  
2 obligated or required to provide you with a hearing.

3 This Order shall be effective immediately.

4 DATED: 1/9/12

5 BARBARA J. BIGBY  
6 Acting Real Estate Commissioner

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**FILED**

FEB 07 2012

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

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BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	No. H-35261 LA
BETTER MORTGAGE BROKERS INC. )	
doing business as Compass Realty )	
and <u>JOHN THOMAS MARCELL</u> , )	
individually and as designated )	
officer of Better Mortgage )	
Brokers Inc. )	
Respondents. )	

ORDER SUSPENDING REAL ESTATE LICENSE

To: JOHN THOMAS MARCELL	99 N. San Antonio Ave.
P. O. Box 1087	Suite 120
Upland, CA. 91785-1087	Upland, CA 91786-4578

On January 28, 2009, Respondent entered into a Stipulation and Agreement with the Department. The terms of the Agreement required Respondent to pay for the audit as set forth in the Real Estate Commissioner's Decision in Case No. H-35261 LA, effective April 2, 2009. The Commissioner has determined that Respondent has failed to satisfy this condition by not

1 paying for the total cost of the audit in the amount of  
2 \$6,556.30.

3 NOW, THEREFORE, IT IS ORDERED under that the real  
4 estate broker license heretofore issued to Respondent and the  
5 exercise of any privileges thereunder are hereby suspended until  
6 such time as Respondent provides proof satisfactory to the  
7 Department of having paid for the audit referred to above or  
8 pending final determination made after hearing (see "Hearing  
9 Rights" set forth below)..

10 IT IS FURTHER ORDERED that all license certificates and  
11 identification cards issued by the Department of Real Estate  
12 which are in the possession of Respondent be immediately  
13 surrendered by personal delivery or by mailing in the enclosed  
14 self-addressed envelope to:

15 DEPARTMENT OF REAL ESTATE  
16 Attention: Flag Section  
17 Post Office Box 187000  
18 Sacramento, CA 95818-7000

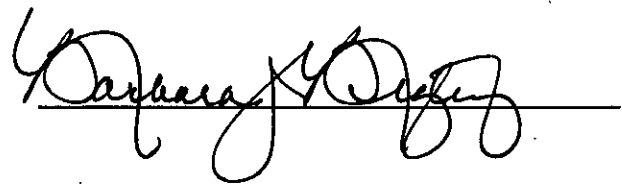
18 HEARING RIGHTS: you have the right to a hearing to  
19 contest the Commissioner's determination that you are in  
20 violation of the condition that you pay for the audit. If you  
21 desire a hearing, you must submit a written request. The request  
22 may be in any form as long as it is in writing and indicates that  
23 you want a hearing. Unless a written request for a hearing,  
24 signed by or on behalf of you, is delivered or mailed to the  
25 Department at 320 West Fourth Street, Suite 350, Los Angeles,  
26 California 90013, within 20 days after the date that this Order  
27

1 was mailed to or served on you, the Department will not be  
2 obligated or required to provide you with a hearing.

3 This Order shall be effective immediately.

4 DATED: 1/9/12

5 BARBARA J. BIGBY  
6 Acting Real Estate Commissioner

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*Suits*

1 Department of Real Estate  
320 West 4th Street, Ste. 350  
2 Los Angeles, California 90013-1105  
3 Telephone: (213) 576-6982 (office)

**FILED**

MAR - 3 2009

DEPARTMENT OF REAL ESTATE  
BY: *Asy*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )  
12 BETTER MORTGAGE BROKERS INC.; )  
doing business as Compass Realty; )  
13 and JOHN THOMAS MARCELL, )  
individually and as designated )  
14 officer of Better Mortgage )  
Brokers Inc., )  
15 )  
16 Respondents. )

No. H-35261 LA

STIPULATION  
AND  
AGREEMENT

17  
18 It is hereby stipulated by and between Respondents  
19 BETTER MORTGAGE BROKERS INC. and JOHN THOMAS MARCELL,  
20 individually and as designated officer of Better Mortgage Brokers  
21 Inc. (sometimes collectively referred to as "Respondents"),  
22 represented by the Law Offices of Herman Thordsen, Esq. and the  
23 Complainant, acting by and through Elliott Mac Lennan, Counsel  
24 for the Department of Real Estate, as follows for the purpose of  
25 settling and disposing of the Accusation ("Accusation") filed on  
26 September 2, 2008, in this matter:

27 ///

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

10 5. This Stipulation is made for the purpose of  
11 reaching an agreed disposition of this proceeding and is  
12 expressly limited to this proceeding and any other proceeding or  
13 case in which the Department of Real Estate ("Department"), the  
14 state or federal government, or any agency of this state, another  
15 state or federal government is involved.

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 the audit. The  
12 amount of said cost for the audit is \$6,556.30.

13                   9. Respondents have received, read, and understand the  
14 "Notice Concerning Costs of Subsequent Audit". Respondents  
15 further understand that by agreeing to this Stipulation, the  
16 findings set forth below in the Determination of Issues become  
17 final, and the Commissioner may charge Respondents for the cost  
18 of any subsequent audit conducted pursuant to Business and  
19 Professions Code Section 10148 to determine if the violations  
20 have been corrected. The maximum cost of the subsequent audit  
21 will not exceed \$6,556.30.  
22

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DETERMINATION OF ISSUES

1 By reason of the foregoing, it is stipulated and agreed  
2 that the following determination of issues shall be made:  
3

I.

4 The conduct, acts or omissions of BETTER MORTGAGE  
5 BROKERS INC. and JOHN THOMAS MARCELL, as described in Paragraph  
6 4, above, are in violation of Sections 10145 and 10240 of the  
7 Business and Professions Code ("Code") and Sections 2831, 2831.1  
8 and 2832(a) of Title 10, Chapter 6 of the California Code of  
9 Regulations ("Regulations") and is a basis for discipline of  
10 Respondents' licenses and license rights as violations of the  
11 Real Estate Law pursuant to Code Section 10177(d).  
12

II.

13 The conduct, acts or omissions of JOHN THOMAS MARCELL,  
14 as described in Paragraph 4, above, constitutes a failure to keep  
15 BETTER MORTGAGE BROKERS INC. in compliance with the Real Estate  
16 Law during the time that he was the officer designated by a  
17 corporate broker licensee in violation of Section 10159.2 of the  
18 Code. This conduct is a basis for the suspension or revocation  
19 of Respondent's license pursuant to Code Section 10177(h).  
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ORDER

I.

1  
2  
3       The restricted real estate broker license of Respondent  
4 BETTER MORTGAGE BROKERS INC., under the Real Estate Law is  
5 revoked; provided, however, a new restricted real estate broker  
6 license shall be issued to said Respondent, pursuant to Section  
7 10156.5 of the Business and Professions Code if Respondent:

8           (A) Makes application thereof and pays to the  
9 Department of Real Estate the appropriate fee for the restricted  
10 license within ninety (90) days from the effective date of this  
11 Decision.

12           (B) The restricted license issued to Respondent shall  
13 be subject to all of the provisions of Section 10156.7 of the  
14 Business and Professions Code and to the followings limitations,  
15 conditions and restrictions imposed under authority of Section  
16 10156.6 of that Code:

17           1. The restricted license issued to Respondent may be  
18 suspended prior to hearing by Order of the Real Estate  
19 Commissioner in the event of a Respondent's conviction or plea of  
20 nolo contendere to a crime which is substantially related to a  
21 Respondent's fitness or capacity as a real estate licensee.

22           2. The restricted license issued to Respondent may  
23 be suspended prior to hearing by Order of the Real Estate  
24 Commissioner on evidence satisfactory to the Commissioner that  
25 Respondent has violated provisions of the California Real Estate  
26

1 Law, the Subdivided Lands Law, Regulations of the Real Estate  
2 Commissioner or conditions attaching to the restricted license.

3 3. Respondent shall not be eligible to apply for the  
4 issuance of an unrestricted real estate license nor for the  
5 removal of any of the conditions, limitations or restrictions of  
6 a restricted license until two (2) years have elapsed from the  
7 effective date of this Decision.

8 II.

9 A. All licenses and licensing rights of Respondent  
10 BETTER MORTGAGE BROKERS INC. under the Real Estate Law are  
11 suspended for a period of thirty (30) days from the issuance of a  
12 new restricted license.

13 B. All licenses and licensing rights of Respondent  
14 JOHN THOMAS MARCELL, under the Real Estate Law are suspended for  
15 a period of thirty (30) days from the effective date of this  
16 Decision.

17 1. Provided, however, that if Respondents request, all  
18 thirty (30) days of said suspension (or a portion thereof) shall  
19 be stayed for two (2) years upon condition that:

20 2. Each Respondent pays a monetary penalty pursuant to  
21 Section 10175.2 of the Business and Professions Code at the rate  
22 of \$33.33 per day for each day of the suspension for a monetary  
23 penalty of \$1,000, or \$2,000 total.

24 3. Said payment shall be in the form of a cashier's  
25 check or certified check made payable to the Recovery Account of  
26 the Real Estate Fund. Said check must be received by the  
27

1 Department prior to the effective date of the Decision in this  
2 matter.

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

6 5. If Respondents fail to pay the monetary penalty in  
7 accordance with the terms of the Decision, the Commissioner may,  
8 without a hearing, order the immediate execution of all or any  
9 part of the stayed suspension, in which event Respondents shall  
10 not be entitled to any repayment nor credit, prorated or  
11 otherwise, for money paid to the Department under the terms of  
12 this Decision.

13 6. If Respondents pay the monetary penalty and if no  
14 further cause for disciplinary action against the real estate  
15 licenses of Respondents occur within two (2) years from the  
16 effective date of the Decision, the stay hereby granted shall  
17 become permanent.

18 III.

19  
20 Pursuant to Section 10148 of the Business and  
21 Professions Code, Respondents BETTER MORTGAGE BROKERS INC. and  
22 JOHN THOMAS MARCELL shall pay the Commissioner's reasonable cost  
23 for (a) the audit which led to this disciplinary action (b) a  
24 subsequent audit to determine if Respondent is now in compliance  
25 with the Real Estate Law. The cost of the audit is \$6,556.30.  
26 In calculating the amount of the Commissioner's reasonable cost,  
27

1 the Commissioner may use the estimated average hourly salary for  
2 all persons performing audits of real estate brokers, and shall  
3 include an allocation for travel time to and from the auditor's  
4 place of work. Said amount for the prior and subsequent audits  
5 shall not exceed \$13,112.60.

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

10 The Commissioner may suspend the license of Respondents  
11 pending a hearing held in accordance with Section 11500, et seq.,  
12 of the Government Code, if payment is not timely made as provided  
13 for herein, or as provided for in a subsequent agreement between  
14 the Respondents and the Commissioner. The suspension shall  
15 remain in effect until payment is made in full or until  
16 Respondents enter into an agreement satisfactory to the  
17 Commissioner to provide for payment, or until a decision  
18 providing otherwise is adopted following a hearing held pursuant  
19 to this condition.  
20

21 IV.

22 All licenses and licensing rights of Respondent JOHN  
23 THOMAS MARCELL are indefinitely suspended unless or until  
24 Respondent provides proof satisfactory to the Commissioner, of  
25 having taken and successfully completed the continuing education  
26 course on trust fund accounting and handling specified in  
27

1 paragraph (3) of subdivision (a) of Section 10170.5 of the  
2 Business and Professions Code. Proof of satisfaction of this  
3 requirement includes evidence that respondent has successfully  
4 completed the trust fund account and handling continuing  
5 education course within 120 days prior to, or by the effective  
6 date of the Decision in this matter.

7  
8 DATED: 1-9-09 ELI  
9 ELLIOTT MAC LENNAN, Counsel for  
10 the Department of Real Estate

11 \* \* \*

12 EXECUTION OF THE STIPULATION

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

24 MAILING AND FACSIMILE

25 Respondent(s) (1) shall mail the original signed  
26 signature page of the stipulation herein to Elliott Mac Lennan:  
27



1 Attention: Legal Section, Department of Real Estate, 320 W.  
2 Fourth St., Suite 350, Los Angeles, California 90013-1105.

3 Additionally, Respondent(s) shall also (2) facsimile a copy of  
4 signed signature page, to the Department at the following  
5 telephone/fax number: (213) 576-6917, Attention: Elliott Mac  
6 Lennan.

7 A facsimile constitutes acceptance and approval of the  
8 terms and conditions of this stipulation. Respondent(s) agrees,  
9 acknowledges and understands that by electronically sending to  
10 the Department a facsimile copy of Respondent's actual signature  
11 as it appears on the stipulation, which receipt of the facsimile  
12 copy by the Department shall be as binding on Respondent(s) as if  
13 the Department had received the original signed stipulation.  
14

15 DATED: January 6, 2009

John Thomas Marcell  
16 BETTER MORTGAGE BROKERS INC.  
17 BY: JOHN THOMAS MARCELL,  
18 Respondent

19  
20 DATED: January 6, 2009

John Thomas Marcell  
21 JOHN THOMAS MARCELL, individually  
22 and as designated officer of Better  
23 Mortgage Brokers Inc., Respondent

24  
25 DATED: January 10, 2009

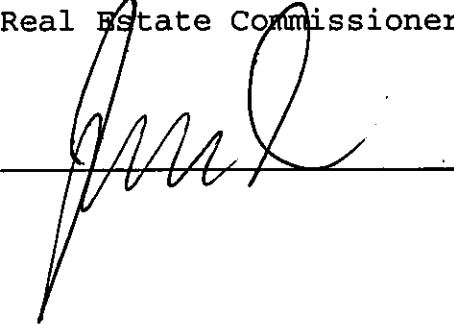
Herman Thordsen  
26 HERMAN THORSEN,  
27 Attorney for Respondent  
Approved as to form

\* \* \*

1                    The foregoing Stipulation and Agreement is hereby adopted  
2  
3 as my Decision as to Respondents BETTER MORTGAGE BROKERS INC. and  
4 JOHN THOMAS MARCELL and shall become effective at 12 o'clock noon  
5 on April 2, 2009.

6  
7                    IT IS SO ORDERED January 28, 2009.

8  
9                    JEFF DAVI  
10                    Real Estate Commissioner

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1.

1 The Complainant, Robin Trujillo, acting in her official  
2 capacity as a Deputy Real Estate Commissioner of the State of  
3 California, makes this Accusation against BETTER MORTGAGE BROKERS  
4 INC. and JOHN THOMAS MARCELL.  
5

2.

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

10 LICENSE HISTORY

3.

11  
12 A. At all times mentioned, BETTER MORTGAGE BROKERS  
13 INC. ("BMBI") was licensed or had license rights issued by the  
14 Department of Real Estate ("Department") as a restricted real  
15 estate broker. On December 13, 1985, BMBI was originally  
16 licensed as a corporate real estate broker.

17 On November 29, 1989, in case number H-23497 LA, BMBI's  
18 broker license was revoked with right to a restricted broker  
19 license, as more fully set forth below in Paragraph 11.

20 On November 30, 1988, in case number H-23499 LA, an  
21 Order To Desist And Refrain was filed against Respondents BMBI  
22 and JOHN THOMAS MARCELL, as more fully set forth below in  
23 Paragraph 12.

24 B. At all times mentioned, JOHN THOMAS MARCELL  
25 ("MARCELL") was licensed or had license rights issued by the  
26 Department as a real estate broker. On July 13, 1999, MARCELL  
27 was originally licensed as a real estate salesperson. On March

1 9, 1993, MARCELL was originally licensed as a real estate broker.  
2 On May 13, 1994, MARCELL was originally licensed as the  
3 designated officer or BMBI; and

4 C. At all times material herein, BMBI was licensed by  
5 the Department as a corporate restricted real estate broker by  
6 and through MARCELL, as the designated officer and broker  
7 responsible, pursuant to Code Section 10159.2 of the Business and  
8 Professions Code for supervising the activities requiring a real  
9 estate license conducted on behalf BMBI of by BMBI's officers,  
10 agents and employees, including MARCELL.

11  
12 BROKERAGE

13 BETTER MORTGAGE BROKERS INC.

14 4.

15 At all times mentioned, in the City of Upland, County  
16 of Los Angeles, BMBI acted as a real estate broker and conducted  
17 licensed activities within the meaning of:

18 A. Code Section 10131(d). BMBI operated a mortgage and  
19 loan brokerage dba Compass Realty; and

20 B. In addition, BMBI conducted broker-controlled  
21 escrows through its escrow division under the exemption set forth  
22 in California Financial Code Section 17006(a)(4) for real estate  
23 brokers performing escrows incidental to a real estate  
24 transaction where the broker is a party and where the broker is  
25 performing acts for which a real estate license is required.

26 ///

27

AUDIT EXAMINATION

BETTER MORTGAGE BROKERS INC.

5.

On August 15, 2008, the Department completed an audit examination of the books and records of BMBI pertaining to the mortgage and loan and broker-escrow activities described in Paragraph 4 that require a real estate license. The audit examination covered a period of time beginning on September 1, 2005 to February 29, 2008. 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 070289 and LA 070338 and the exhibits and work papers attached to said audit report.

TRUST ACCOUNT

6.

At all times mentioned, in connection with the activities described in Paragraph 4, above, BMBI accepted or received funds including funds in trust (hereinafter "trust funds") from or on behalf of actual or prospective parties, including lenders, borrowers, homeowners and escrow holders, to mortgage loan transactions handled by BMBI 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 BMBI in the bank account as follows:

1 deposited and/or maintained by BMBI in the bank account as  
2 follows:

3 "Better Mortgage Brokers Inc. dba Escrow Division Trust Account  
4 Account No. 233130362"  
Citizens Business Bank  
Ontario, CA 91762 (escrow trust account)

5  
6 VIOLATIONS OF THE REAL ESTATE LAW

7 7.

8 In the course of activities described in Paragraphs 4  
9 and 6, above, and during the examination period described in  
10 Paragraph 5, Respondents BMBI and MARCELL, acted in violation of  
11 the Code and the Regulations in that they:

12 (a) (1) Failed to a record trust deed or an assignment  
13 naming the lender Jon Savich and Linda Gin as beneficiaries for  
14 buyer-borrower Mark Nourse for the vacant land (APN-0183-121-03-  
15 000) located in Barstow, California, secured by a trust deed on  
16 the aforesaid real property, thus releasing the invested funds to  
17 borrower Mark Nourse without ever recording a trust deed securing  
18 such loan or without ever recording the full amount of a trust  
19 deed securing such loan within ten (10) working days after  
20 receipt of funds from lenders Savich and Gin, in violation of  
21 Code Sections 10234 and 10177(g).

22  
23 (a) (2) Failed to deliver conformed copies of the Mark  
24 Nourse deed of trust to the lender, Jon Savich and Linda Gin, and  
25 the borrower, Mark Nourse, within a reasonable amount of time  
26 from the date of recording, in violation of Code Section 10234.5.  
27

1 (b) Failed to disclose in writing to all parties of  
2 BMBI's financial interest and ownership of its escrow division,  
3 as required by Code Section 10176(g) and Regulation 2950(h).

4 (c)(1) Failed to retain a true and correct copy of a  
5 Department of Real Estate approved Mortgage Loan Disclosure  
6 Statement signed by the broker for borrower Mark Nourse, in  
7 violation of Code Section 10240; and

8 (c)(2) Failed to disclose yield spread premiums from  
9 lenders on the approved Mortgage Loan Disclosure Statement for  
10 the borrowers Dan Markey and Frederick Gallegos, in violation of  
11 Code Section 10240, 10241 and Regulation 2840.1.

12 (d) Failed to maintain an adequate control record in  
13 the form of a columnar record in chronological order of all trust  
14 funds received, deposited and disbursed by the escrow trust fund,  
15 in the form of credit report or appraisal fees collected along  
16 with commissions by BMBI, as required by Code Section 10145 and  
17 Regulations 2831, 2950(d) and 2951.

18 (e) Failed to maintain a separate record for each  
19 beneficiary or transaction, thereby failing to account for all  
20 trust funds received, deposited and disbursed for the escrow  
21 trust account, including appraisal fees collected along with  
22 commissions, as required by Code Section 10145 and Regulations  
23 2831.1, 2950(d) and 2951.

24 (f) Failed to place credit report fees collected from  
25 borrowers at close of escrow into BMBI's escrow trust account in  
26 the name of the broker as trustee at a bank or other financial  
27



1 institution, in violation of Code Section 10145 of the Code and  
2 Regulations 2832(a), 2950(d) and 2951. BMBI did not pay credit  
3 report companies prior to the close of escrow for escrow fees  
4 collected along with commissions.

5 DISCIPLINARY STATUES AND REGULATIONS

6 8.

7 The conduct of Respondents BMBI and MARCELL described  
8 in Paragraph 7, above, violated the Code and the Regulations as  
9 set forth below:

10 PARAGRAPH

PROVISIONS VIOLATED

11  
12 7(a)

Code Sections 10234, 10234.5 and  
13 10177(g)

14  
15  
16 7(b)

Code Section 10176(g) and  
17 Regulation 2950(h)

18  
19  
20 7(c)

Code Sections 10240 and 10241 and  
21 Regulation 2840.1

22  
23  
24 7(d)

Code Section 10145 and Regulations  
25 2831, 2950(d) and 2951

1 7(f)

Code Section 10145 and Regulations  
2832(a), 2950(d) and 2951

3 The foregoing violations constitute cause for the suspension or  
4 revocation of the real estate license and license rights of BMBI  
5 and MARCELL, under the provisions of Code Sections 10176(g),  
6 10177(d) and/or 10177(g).

7  
8 9.

9 The overall conduct of Respondents BMBI and MARCELL  
10 constitutes negligence or incompetence. This conduct and  
11 violation are cause for the suspension or revocation of the real  
12 estate license and license rights of Respondents BMBI and MARCELL  
13 pursuant to Code Section 10177(g).

14 10.

15 The overall conduct of Respondent MARCELL constitutes a  
16 failure on his part, as officer designated by a corporate broker  
17 licensee, to exercise the reasonable supervision and control over  
18 the licensed activities of BMBI as required by Code Section  
19 10159.2, and to keep BMBI in compliance with the Real Estate Law,  
20 and is cause for the suspension or revocation of the real estate  
21 license and license rights of MARCELL pursuant to the provisions  
22 of Code Section 10177(h).

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PRIOR DEPARTMENT ACTION

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3 On November 15, 1988, in Case No. H-23497 LA, an  
4 Accusation was filed against Respondents BETTER MORTGAGE BROKERS  
5 INC. and JOHN THOMAS MARCELL, that resulted in discipline by  
6 revocation with right to a restricted license for violations of  
7 Code Sections 10137 and 10177(g), effective June 13, 1991. To  
8 date, BETTER MORTGAGE BROKERS INC. remains restricted.

12.

9  
10 On November 30, 1988, in Case No. H-23499 LA, an ORDER  
11 TO DESIST AND REFRAIN was filed against Respondents BETTER  
12 MORTGAGE BROKERS INC. and JOHN THOMAS MARCELL, inter alia, under  
13 Section 10086 of the Code (Engaging in Prohibited Activity, Order  
14 to Desist and Refrain) for violations of Code Section 10130,  
15 10137, 10159.2, 10177(h) and 10240 and Sections 2731, 2830, 2834  
16 and 2950(h) of Title 10, Chapter 6, California Code of  
17 Regulations.  
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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 BETTER MORTGAGE BROKERS INC. dba Compass Realty, and JOHN THOMAS  
6 MARCELL, under the Real Estate Law (Part 1 of Division 4 of the  
7 Business and Professions Code) and for such other and further  
8 relief as may be proper under other applicable provisions of law.

9 Dated at Los Angeles, California

10 this 28 day of August 2008  
11 Robin Trujillo  
12 Deputy Real Estate Commissioner  
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24 cc: Better Mortgage Brokers Inc.  
25 c/o John Thomas Marcell D.O.  
26 Robin Trujillo  
27 Sacto  
Audits - Darryl M. Thomas