

fact

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

Telephone: (213) 576-6982

FILED

SEP 14 2009

DEPARTMENT OF REAL ESTATE
BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-35613 LA

NEW CENTURY PACIFICOM INC.; and
TSUNEO OGAMI, individually and
as designated officer of New
Century Pacificom Inc.,

Respondents.

STIPULATION
AND
AGREEMENT

It is hereby stipulated by and between Respondents
NEW CENTURY PACIFICOM INC. and TSUNEO OGAMI, individually and as
designated officer of New Century Pacificom Inc., represented by
T. Michael Fehmel, Esq. (sometimes collectively referred to as
"Respondents"), 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 ("Accusation") filed on January 14, 2009, in this
matter:

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 Respondent 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 \$8,802.27.

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 \$8,802.27.

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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, acts or omissions of NEW CENTURY PACIFICOM INC. and TSUNEO OGAMI, as described in Paragraph 4, above, are in violation of Sections 10145, 10159.5, 10240 of the Business and Professions Code ("Code") and Sections 2726, 2731, 2831.2, 2832.1, 2832(d), 2834, 2840, 2840.1, 2950(d), 2950(g), 2950(h) and 2951 of Title 10, Chapter 6 of the California Code of Regulations ("Regulations") and is a basis for discipline of Respondents' license and license rights as violation of the Real Estate Law pursuant to Code Section 10177(g).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

The license and licensing rights of Respondents NEW CENTURY PACIFICOM INC. and TSUNEO OGAMI, under the Real Estate Law, are suspended for a period of ninety (90) days from the effective date of this Decision.

A. Provided, however, that if Respondents request, the initial forty five (45) days of said suspension (or a portion thereof) shall be stayed for two (2) years upon condition that:

1. Each Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate

1 of \$100.00 per day for each day of the suspension for a monetary
2 penalty of \$4,500, or \$9,000 total.

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

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

11 4. If Respondents fail to pay the monetary penalty in
12 accordance with the terms of the Decision, the Commissioner may,
13 without a hearing, order the immediate execution of all or any
14 part of the stayed suspension, in which event the Respondent
15 shall not be entitled to any repayment nor credit, prorated or
16 otherwise, for money paid to the Department under the terms of
17 this Decision.

18 5. If Respondents pay the monetary penalty and if no
19 further cause for disciplinary action against the real estate
20 license of Respondent occurs within two (2) years from the
21 effective date of the Decision, the stay hereby granted shall
22 become permanent.

23 B. The remaining forty five (45) days of the ninety
24 (90) day suspension shall be stayed for two (2) years upon the
25 following terms and conditions:
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1. Respondents shall obey all laws, rules and
regulations governing the rights, duties and responsibilities of
a real estate licensee in the State of California; and

2. That no final subsequent determination be made after hearing or upon stipulation, that cause for disciplinary action occurred within two (2) years from the effective date of this Decision. Should such a determination be made, the Commissioner may, in his 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.

II.

Pursuant to Section 10148 of the Business and Professions Code, Respondents NEW CENTURY PACIFICOM INC. and TSUNEO OGAMI 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 \$8,802.27. 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 \$17,604.54.

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

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

15 III.

16 All licenses and licensing rights of Respondent TSUNEO
17 OGAMI are indefinitely suspended unless or until Respondent
18 provides proof satisfactory to the Commissioner, of having taken
19 and successfully completed the continuing education course on
20 trust fund accounting and handling specified in paragraph (3) of
21 subdivision (a) of Section 10170.5 of the Business and
22 Professions Code. Proof of satisfaction of this requirement
23 includes evidence that Respondent has successfully completed the
24 trust fund account and handling continuing education course
25 within 120 days prior to the effective date of the Decision.
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IV.

Respondent TSUNEO OGAMI shall within six (6) months
from the effective date of the Decision herein, take and pass the
Professional Responsibility Examination administered by the
Department including the payment of the appropriate examination
fee. If Respondent fails to satisfy this condition, the
Commissioner may order suspension of Respondent's license until
Respondent passes the examination.

V.

All licenses and licensing rights or Respondents are
indefinitely suspended unless or until Respondents provide
evidence satisfactory to the Commissioner that the trust fund
deficit set forth in the Accusation in the amount of \$30,647.19,
has been cured, including the identification of the source of
funds used to cure the deficit.

DATED: 8-13-09

ELIOTT MAC LENNAN
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

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EXECUTION OF THE STIPULATION

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

Respondents (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.

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Respondents 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. Respondents agree, acknowledge and understand that by electronically sending to the Department a facsimile copy of Respondents' actual signature as it appears on the stipulation that receipt of the facsimile copy by the Department shall be as binding on Respondents as if the Department had received the original signed stipulation.

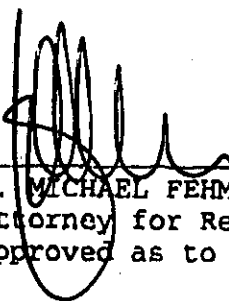
DATED: 7/16/09


NEW CENTURY PACIFICOM INC., a
corporate real estate broker,
BY: TSUNEO OGAMI D.O., Respondent

DATED: 7/16/09


TSUNEO OGAMI, individually and as
designated officer of New Century
Pacificom Inc., Respondent

DATED: July 16, 2009


T. MICHAEL FEHMEI, ESQ.
Attorney for Respondents
Approved as to form

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)

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DEPARTMENT OF REAL ESTATE

BY: 

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

NEW CENTURY PACIFICOM INC.;
and TSUNEO OGAMI, individually
and as designated officer of
New Century Pacificom Inc.,

Respondents.

No. H- 35613 LA

A C C U S A T I O N

The Complainant, Maria Suarez, a Deputy Real Estate
Commissioner of the State of California, for cause of Accusation
against NEW CENTURY PACIFICOM INC. and TSUNEO OGAMI, individually
and as designated officer of New Century Pacificom Inc., alleges
as follows:

1.

The Complainant, Maria Suarez, acting in her official
capacity as a Deputy Real Estate Commissioner of the State of
California, makes this Accusation against NEW CENTURY PACIFICOM
INC. and TSUNEO OGAMI.

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, NEW CENTURY PACIFICOM INC. ("NCPI") and TSUNEO OGAMI ("OGAMI") were licensed or had license rights issued by the Department of Real Estate ("Department") as real estate brokers. OGAMI was originally licensed as a real estate broker on August 12, 1997. In Case No. H-29363 LA, Respondent's real estate broker license was revoked with a right to a restricted real estate broker license effective October 2, 2002, as more fully set forth in Paragraph 10, below. Respondent is presently licensed as a restricted real estate broker

B. At all times material herein, NCPI was licensed by the Department of Real Estate of the State of California ("Department") as a corporate real estate broker by and through OGAMI, as the designated officer and broker responsible, pursuant to Code Section 10159.2 of the Business and Professions Code for supervising the activities requiring a real estate license conducted on behalf NCPI of by NCPI's officers, agents and employees, including OGAMI. NCPI was originally licensed as a corporate real estate broker on December 31, 2002. Since its inception, OGAMI has been the designated officer of NCPI.

BROKERAGE

4.

At all times mentioned, in the City of Downey, County of Los Angeles, NCPI acted as a corporate real estate broker conducting licensed activities including broker-controlled escrows through its Mar Vista 21 escrow division, under the exemption set forth in California Financial Code Section 17006(a)(4) for real estate brokers performing escrows incidental to a real estate transaction where the broker is a party and where the broker is performing acts for which a real estate license is required.

AUDIT EXAMINATION

5.

On September 30, 2008, the Department completed an audit examination of the books and records of NCPI pertaining to the broker-controlled activities described in Paragraph 4, which require a real estate license. The audit examination covered a period of time beginning on May 1, 2008 to April 30, 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 070332, LA 070363 and LA 070364 and the exhibits and work papers attached to said audit report.

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TRUST ACCOUNT

6.

At all times mentioned, in connection with the activities described in Paragraph 4, NCPI accepted or received funds in trust (trust funds) from or on behalf of buyers, sellers, lenders, borrowers and escrow holders. Thereafter NCPI made disposition of such funds. NCPI maintained the following trust accounts into which he deposited certain of these funds:

"New Century Pacificom Inc. dba Mar Vista 21/Escrow Trust Account #11
Account No. 0001-660780"
Mellon 1st Business Bank
601 West First Street
Los Angeles, California ("T/A #1")

"New Century Pacificom Inc. dba Mar Vista 21/Escrow Trust Account
Account No. 0001-734393"
Mellon 1st Business Bank
601 West First Street
Los Angeles, California ("T/A #2")

VIOLATIONS OF THE REAL ESTATE LAW

7.

In the course of activities described in Paragraphs 4 and 6, above, and during the examination period described in Paragraph 5, Respondents NCPI and OGAMI, acted in violation of the Code and the Regulations in that they:

(a) Permitted, allowed or caused the disbursement of trust funds from the escrow trust accounts where the disbursement of funds reduced the total of aggregate funds in the trust accounts set forth below, to an amount which was less than the

1 existing aggregate trust fund liability of NCPI to every
2 principal who was an owner of said funds, without first obtaining
3 the prior written consent of the owners of said funds, as
4 required by Code Section 10145 and Regulations 2832.1, 2950(g)
5 and 2951:

- 6 • T/A #1 \$9,291.70 (April 30, 2008)
- 7 • T/A #2 \$21,255.49 (February 6, 2007)
- 8 • Total T/A #1 and T/A #2 \$30,647.19

9
10 (b) Failed to perform a monthly reconciliation of the
11 balance of all separate beneficiary or transaction records
12 maintained pursuant to Regulation 2831.1 with the record of all
13 trust funds received for all trust accounts and disbursed by both
14 escrow trust accounts, as required by Code Section 10145 and
15 Regulations 2831.2, 2950(d) and 2951.

16 (c) Permitted Yuko Ogami and Christine Han, escrow
17 officer, unlicensed and unbonded persons, to be authorized
18 signatories on the escrow trust accounts, in violation of Code
19 Section 10145 and Regulations 2834, 2950(d) and 2951.

20
21 (d) Failed to place trust funds, including credit
22 report and appraisal fees, accepted on behalf of another into the
23 hands of the owner of the funds, a neutral escrow depository or
24 into a trust fund account in the name of the trustee at a bank or
25 other financial institution not later than three business days
26 following receipt of the funds by the broker or by the broker's
27

1 salesperson, as required by Code Section 10145 and Regulations
2 2832(d), 2950(d) and 2951.

3 (e) Used the fictitious name of "Mar Vista 21 Realty"
4 to conduct licensed activities including broker-controlled
5 escrows without holding a license bearing said fictitious
6 business names, in violation of Code Section 10159.5 and
7 Regulation 2731.

8 (f) Failed to provide or retain a true and correct copy
9 of a Good Faith Estimate that satisfies the requirements of the
10 Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A 2601 et
11 seq.), that (1) sets forth the broker's real estate license
12 number; and (2) a clear and conspicuous statement on the face of
13 the document stating that the Good Faith Estimate does not
14 constitute a loan commitment; and, further sets forth all
15 applicable disclosures including but not limited to (3) yield
16 spread premiums rebates by the lenders, outside of closing, for
17 borrowers Serafin Buccat, Due Le, and Jose Garibay, in violation
18 of Code Section 10240 and Regulations 2840 and 2840.1.
19

20 (g) Failed to disclose in writing to all parties of his
21 financial interest and ownership of NCPI's escrow division "Mar
22 Vista 21 Escrow Division", as required by Regulation 2950(h); and

23 (h) Failed to maintain a signed broker salesperson
24 agreement with eight salespersons of its 135 real estate
25 licensees in violation of Section 2726 of the Regulations.

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DISCIPLINE STATUTES AND REGULATIONS

8.

The conduct of Respondents NCPI and OGAMI 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 Regulations 2832.1, 2950(g) and 2951
7(b)	Code Section 10145 and Regulations 2831.2, 2950(d) and 2951
7(c)	Code Section 10145 and Regulations 2834, 2950(d) and 2951
7(d)	Code Section 10145 and Regulations 2832(d), 2950(d) and 2951
7(e)	Code Sections 10159.5 and Regulation 2731
7(f)	Code Section 10240 and Regulations 2840 and 2840.1
7(g)	Regulation 2950(h)

1
2 7(h)

Regulation 2726

3 The foregoing violations constitutes cause for the suspension or
4 revocation of the real estate license and license rights of NCPI
5 and OGAMI, under the provisions of Code Sections 10177(d) for
6 willful disregard or violation of the Real Estate Law and/or
7 10177(g) for negligence or incompetence.

8 NEGLIGENCE

9 9.

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

15 PRIOR DEPARTMENT ACTION

16 10.

17
18 On January 18, 2002, in Case No. H-29363 LA, an
19 Accusation was filed against Respondent TSUNEO OGAMI that
20 resulted in discipline by way of a revocation of Respondent's
21 broke license with a right to a restricted broke license pursuant
22 to a Decision After Rejection effective October 10, 2002, for a
23 violation of Sections 480(a) and 10177(b) of the California
24 Business and Professions Code, for conviction of a misdemeanor
25 crime.

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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 NEW
5 CENTURY PACIFICOM INC. and TSUNEO OGAMI, under the Real Estate
6 Law (Part 1 of Division 4 of the Business and Professions Code)
7 and for such other and further relief as may be proper under
8 other applicable provisions of law.

9 Dated at Los Angeles, California

10 this

12th day of January 2009

[Signature]
Deputy Real Estate Commissioner

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24 cc: New Century Pacificom Inc.
25 c/o Tsuneo Ogami D.O.
26 Maria Suarez
27 Sacto
Audits - Godswill Keraoru