

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

FILED

DEC 1 2009

DEPARTMENT OF REAL ESTATE
BY: *F. Freely*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)

No. H-35836 LA

12 EMERALD BAY FINANCIAL OF SOUTHERN)
13 CALIFORNIA INC.; and ROBERT HENRY)
14 DONATHAN, individually and as)
15 designated officer of)
16 Emerald Bay Financial Of Southern)
17 California Inc.,)

STIPULATION
AND
AGREEMENT

16 Respondents.)

18 It is hereby stipulated by and between Respondents
19 EMERALD BAY FINANCIAL OF SOUTHERN CALIFORNIA INC. and ROBERT
20 HENRY DONATHAN, individually and as designated officer of Emerald
21 Bay Financial Of Southern California Inc., (sometimes
22 collectively referred to as "Respondents"), and the Complainant,
23 acting by and through Elliott Mac Lennan, Counsel for the
24 Department of Real Estate, as follows for the purpose of settling
25 and disposing of the Accusation ("Accusation") filed on April 7,
26 2009, 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.
24

25 ///

26 ///

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.
26
27

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents EMERALD BAY FINANCIAL OF SOUTHERN CALIFORNIA INC. and ROBERT HENRY DONATHAN, under the Real Estate Law, are suspended for a period of sixty (60) days from the effective date of this Decision; provided, however, that thirty (30) days of said suspension shall be stayed upon the following terms and conditions:

A.1. Each Respondent pays a monetary penalty pursuant to Section 10175.2 of the Business and Professions Code at the rate of \$66.67 per day for each day of the suspension for a monetary penalty of \$2,000, or \$4,000 total.

2. 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.

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

4. 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 Respondent
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 5. 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 (2) years from the
8 effective date of the Decision, the stay hereby granted shall
9 become permanent.

10 B.1 The remaining thirty (30) days of the sixty (60)
11 day suspension shall be stayed for two (2) years upon the
12 following terms 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 (2) years from the effective date of
19 this Decision. Should such a determination be made, the
20 Commissioner may, in his discretion, vacate and set aside the
21 stay order and reimpose all or a portion of the stayed
22 suspension. Should no such determination be made, the stay
23 imposed herein shall become permanent.
24

25 ///

26 ///

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DATED: 10-22-09

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

* * *

EXECUTION OF THE STIPULATION

We have read the Stipulation. 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. 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.

///

1 A facsimile constitutes acceptance and approval of the
2 terms and conditions of this stipulation. Respondents agree,
3 acknowledge and understand that by electronically sending to the
4 Department a facsimile copy of Respondents' actual signature as
5 it appears on the stipulation that receipt of the facsimile copy
6 by the Department shall be as binding on Respondents as if the
7 Department had received the original signed stipulation.

8
9 DATED: 09.08.09

Henry
Robert Donathan

10 EMERALD BAY FINANCIAL OF SOUTHERN
11 CALIFORNIA INC., a corporate real
12 estate broker,
13 BY: ROBERT HENRY DONATHAN D.O.,
14 Respondent

15 DATED: 09.15.09

Robert Henry Donathan

16 ROBERT HENRY DONATHAN, individually
17 and as designated officer of
18 Emerald Bay Financial Of Southern
19 California Inc., Respondent

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

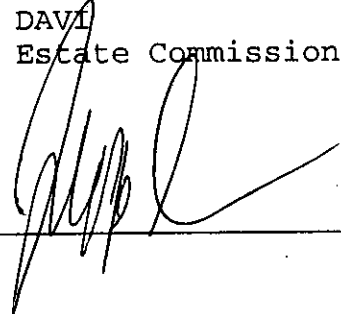
27 ///

* * *

1 The foregoing Stipulation and Agreement is hereby
2
3 adopted as my Decision as to Respondents EMERALD BAY FINANCIAL OF
4 SOUTHERN CALIFORNIA INC. and ROBERT HENRY DONATHAN, individually
5 and as designated officer of Emerald Bay Financial Of Southern
6 California Inc. and shall become effective at 12 o'clock noon on
7 December 21, 2009.

8 IT IS SO ORDERED 11-17, 2009.

9
10 JEFF DAVIS
11 Real Estate Commissioner

12
13 
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

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

FILED

APR - 7 2009

DEPARTMENT OF REAL ESTATE

BY: *Healy*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * * * *

11 In the Matter of the Accusation of)

No. H-35836 LA

12 EMERALD BAY FINANCIAL OF SOUTHERN)
13 CALIFORNIA INC.; and ROBERT HENRY)
14 DONATHAN, individually and as)
15 designated officer of)
16 Emerald Bay Financial of Southern)
17 California Inc.,)

A C C U S A T I O N

17 Respondents.)
18)

19 The Complainant, Robin Trujillo, a Deputy Real Estate
20 Commissioner of the State of California, for cause of Accusation
21 against EMERALD BAY FINANCIAL OF SOUTHERN CALIFORNIA INC.; and
22 ROBERT HENRY DONATHAN, individually and as designated officer of
23 Emerald Bay Financial of Southern California Inc., alleges as
24 follows:
25

26 ///

27 ///

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 EMERALD BAY FINANCIAL
4 OF SOUTHERN CALIFORNIA INC. and ROBERT HENRY DONATHAN.
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 unless
9 specified otherwise.
10

11 LICENSE HISTORY

12 3.

13 A. At all times mentioned, EMERALD BAY FINANCIAL OF
14 SOUTHERN CALIFORNIA INC. ("EMERALD BAY") and ROBERT HENRY
15 DONATHAN ("DONATHAN") were licensed or had license rights issued
16 by the Department of Real Estate ("Department") as a real estate
17 broker. DONATHAN was licensed as the designated officer or
18 EMERALD BAY; and

19 B. At all times material herein, EMERALD BAY was
20 licensed by the Department as a corporate real estate broker by
21 and through DONATHAN, as the designated officer and broker
22 responsible, pursuant to Code Sections 10211 and 10159.2 of the
23 Business and Professions Code for supervising the activities
24 requiring a real estate license conducted on behalf EMERALD BAY
25 of by EMERALD BAY's officers, agents and employees, including
26 DONATHAN.
27

4.

1 At all times mentioned, in City of Santa Ana, County of
2 Orange, EMERALD BAY acted as a real estate broker and conducted
3 licensed activities within the meaning of:
4

5 Code Section 10131(d). EMERALD BAY and DONATHAN
6 operated a mortgage and loan brokerage engaging in activities
7 with the public wherein lenders and borrowers were solicited for
8 loans secured directly or collaterally by liens on real property,
9 wherein such loans were arranged, negotiated, processed and
10 consummated on behalf of others for compensation or in
11 expectation of compensation and for fees often collected in
12 advance.
13

5.

14 On November 13, 2008, the Department completed an audit
15 examination of the books and records of EMERALD BAY pertaining to
16 the mortgage loan activities described in Paragraph 4 that
17 require a real estate license. The audit examination covered a
18 period of time beginning on July 1, 2006 to July 31, 2008. The
19 audit examination revealed violations of the Code and the
20 Regulations as set forth in the following paragraphs, and more
21 fully discussed in Audit Report LA 070391 and the exhibits and
22 work papers attached to said audit report.
23

6.

24 No trust account was maintained during the audit
25 period.
26
27

1
2 In the course of activities described in Paragraphs 4
3 and 6, above, and during the examination period described in
4 Paragraph 5, Respondents EMERALD BAY and DONATHAN, acted in
5 violation of the Code and the Regulations in that Respondents:

6 (a) Failed to timely notify the Department of its
7 cessation of servicing or arranging loans subject to the
8 Threshold Reporting requirements of Code Section 10232, in
9 violation of Code Section 10236.5.
10

11 (b) EMERALD BAY closed its principal place of business
12 during November 2007, without notification to the Department of
13 its new principal place of business, in violation of Code Section
14 10162 and Regulation 2715.

15 (c) As the originator of a covered loan, as defined
16 pursuant to Financial Code Section 4970(b), EMERALD BAY and
17 DONATHAN steered, counseled or directed borrowers to accept loans
18 of a risk grade less favorable than the borrowers would qualify
19 for based on the borrowers' then current underwriting guidelines,
20 prudently applied, considering the information available to the
21 originator, including the information provided by the borrowers,
22 for borrowers Mascorro, Rodriguez, Stewart, Valdez, Mason,
23 Castillo, Jackson, Simonsen, Alvarado and Courtney, in violation
24 of the Predatory Lending Law of Financial Code Section 4973(1)
25 and Code Sections 10176(a) and 10176(i).
26

27 ///

1 (d) Charged financed points and fees in excess of
2 \$1,000 or 6% of the original principal balance, exclusive of
3 points and fees in the nine (9) covered loan transactions for
4 borrowers Mascorro, Rodriguez, Stewart, Valdez, Mason, Castillo,
5 Jackson, Simonsen, Alvarado and Courtney, in violation of the
6 Predatory Lending Law of Financial Code Section 4979.6.

7 (e) Failed to exercise adequate supervision over
8 EMERALD BAY's mortgage loan brokerage activities to ensure
9 compliance the Real Estate Laws and Regulations. DONATHAN had no
10 system in place for regularly monitoring EMERALD BAY's compliance
11 with the Real Estate Law especially in regard to establishing
12 policies to review threshold reporting requirements and
13 compliance with the provisions of the Predatory Lending Law
14 contained in California Financial Code Sections 4970 through
15 4979, in violation of Code Sections 10159.2 and 10177(h) and
16 Regulation 2725.

17 8.

18 The conduct of Respondents EMERALD BAY and DONATHAN
19 described in Paragraph 7, above, violated the Code and the
20 Regulations as set forth below:
21

22 <u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
23 7(a)	Code Section 10236.5
24	
25 7(b)	Code Section 10162 and Regulation
26	2715
27	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

WHEREFORE, Complainant prays that a hearing be conducted on the allegations of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary action against the license and license rights of Respondents EMERALD BAY FINANCIAL OF SOUTHERN CALIFORNIA INC. and ROBERT HENRY DONATHAN, under the Real Estate Law (Part 1 of Division 4 of the Business and Professions Code) and for such other and further relief as may be proper under other applicable provisions of law.

Dated at Los Angeles, California

this 9 day of March 2009.

Robin Trujillo

Deputy Real Estate Commissioner

cc: Emerald Bay financial of Southern California Inc.
c/o Robert Henry Donathan D.O.
Robin Trujillo
Sacto
Audits - Gina Chou