

1 Department of Real Estate  
2 320 W. 4<sup>TH</sup> Street, Suite 350  
3 Los Angeles, CA 90013-1105

4 Telephone: (213) 576-6982

**FILED**

DEC 30 2013

BUREAU OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE  
9 STATE OF CALIFORNIA

10 \* \* \*

11 In the Matter of the Accusation of )

12 DIRECT MORTGAGE FUNDERS INC.; and, )  
13 BENJAMIN MAHJOUBI, individually and as )  
14 designated officer of Direct Mortgage Funders Inc; )  
and DAVID KASHANI, )

15 Respondents. )  
16 )

No. H-37877 LA

STIPULATION AND AGREEMENT

17  
18 It is hereby stipulated by and between Respondents DIRECT MORTGAGE  
19 FUNDERS INC. and BENJAMIN MAHJOUBI, (sometimes referred to as "Respondents"),  
20 represented by Arthur H. Barens, Esq. and the Complainant, acting by and through Elliott Mac  
21 Lennan, Counsel for the Department of Real Estate, as follows for the purpose of settling and  
22 disposing of the Accusation filed on February 14, 2012, in this matter:

23 1. All issues which were to be contested and all evidence which was to be  
24 presented by Complainant and Respondents at a formal hearing on the Accusation, which hearing  
25 was to be held in accordance with the provisions of the Administrative Procedure Act ("APA"),  
26 shall instead and in place thereof be submitted solely on the basis of the provisions of this  
27 Stipulation and Agreement ("Stipulation").

1                   2. Respondents have received, read and understand the Statement to Respondent,  
2 the Discovery Provisions of the APA and the Accusation filed by the Department of Real Estate  
3 in this proceeding.

4                   3. Respondents timely filed a Notice of Defense pursuant to Section 11506 of the  
5 Government Code for the purpose of requesting a hearing on the allegations in the Accusation.  
6 Respondents hereby freely and voluntarily withdraw said Notice of Defense. Respondents  
7 acknowledge that they understand that by withdrawing said Notice of Defense they thereby waive  
8 their right to require the Commissioner to prove the allegations in the Accusation at a contested  
9 hearing held in accordance with the provisions of the APA and that they will waive other rights  
10 afforded to them in connection with the hearing such as the right to present evidence in their  
11 defense and the right to cross-examine witnesses.

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

18                   5. This Stipulation is made for the purpose of reaching an agreed disposition of  
19 this proceeding and is expressly limited to this proceeding and any other proceeding or case in  
20 which the Department of Real Estate ("Department"), the state or federal government, or any  
21 agency of this state, another state or federal government is involved.

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

1 made herein.

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

8 8. Respondents DIRECT MORTGAGE FUNDERS INC. and BENJAMIN  
9 MAHJOUBI understand that by agreeing to this Stipulation, Respondents agree to pay, pursuant  
10 to Business and Professions Code Section 10148, the cost of the audit. The amount of said cost  
11 for the original audit (LA 090260) is \$5,481.00.

12 9. Respondents DIRECT MORTGAGE FUNDERS INC. and BENJAMIN  
13 MAHJOUBI have received, read, and understand the "Notice Concerning Costs of Subsequent  
14 Audit". Respondents further understand that by agreeing to this Stipulation, the findings set forth  
15 below in the Determination of Issues become final, and the Commissioner may charge  
16 Respondents for the cost of any subsequent audit conducted pursuant to Business and Professions  
17 Code Section 10148 to determine if the violations have been corrected. The maximum cost of  
18 the follow-up audit will not exceed \$5,481.00.

19 10. Respondents DIRECT MORTGAGE FUNDERS INC. and BENJAMIN  
20 MAHJOUBI understand that by agreeing to this Stipulation, Respondents agree to pay, pursuant  
21 to Business and Professions Code Section 10106, the cost of the investigation and enforcement.  
22 The amount of said cost is \$469.44.

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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 DIRECT MORTGAGE FUNDERS INC and BENJAMIN MAHJOUBI, as described in Paragraph 4, herein above, is in violation of Sections 10085, 10145, 10146, 10148, and 10240 of the Business and Professions Code ("Code") and Sections 2725, 2831, 2831.1, 2831.2, 2832, 2840, 2970, and 2972 of Chapter 6 of the California Code of Regulations ("Regulations") and is a basis for discipline of Respondents' license and license rights as violations of the Real Estate Law pursuant to Code Sections 10177(d), 10177(g) and 10177(h).

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondents DIRECT MORTGAGE FUNDERS INC. and BENJAMIN MAHJOUBI, 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 thirty (30) 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 of \$166.66 per day for each day of the suspension for a total monetary penalty of \$10,000.

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.

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

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

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

11                   B. The remaining sixty (60) days of the ninety (90) day suspension shall be stayed  
12 for two (2) years upon the following terms and conditions:

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

15                   2. That no final subsequent determination be made after hearing or upon  
16 stipulation, that cause for disciplinary action occurred within two (2) years from the effective  
17 date of this Decision. Should such a determination be made, the Commissioner may, in his  
18 discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed  
19 suspension. Should no such determination be made, the stay imposed herein shall become  
20 permanent.

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II.

Pursuant to Section 10148 of the Business and Professions Code, Respondents  
DIRECT MORTGAGE FUNDERS INC. and BENJAMIN MAHJOUBI shall pay the  
Commissioner's reasonable cost for (a) the audit which led to this disciplinary action and (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 \$5,481.00. 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 \$10,962.00. Respondents are jointly and severally liable  
for the cost of the audits.

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  
Respondents and the Commissioner. The suspension shall remain in effect until payment is  
made in full or until Respondents enters into an agreement satisfactory to the Commissioner to  
provide for payment, or until a decision providing otherwise is adopted following a hearing held  
pursuant to this condition.

III.

All licenses and licensing rights of Respondent are indefinitely suspended from  
the effective date of the Decision unless or until Respondent pays the sum of \$469.44 for the  
Commissioner's reasonable cost of the investigation and enforcement which led to this  
disciplinary action. Said payment shall be in the form of a cashier's check or certified check  
made payable to the Department of Real Estate, Real Estate Fund.

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IV.

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

V.

Respondent BENJAMIN MAHJOUBI, 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. The Commissioner shall afford  
Respondent the opportunity for a hearing pursuant to the Administrative Procedure Act to present  
such evidence.

VI.

Respondent BENJAMIN MAHJOUBI, shall, within nine (9) months from the  
effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner  
that Respondent has, since the most recent issuance of an original or renewal real estate license,  
taken and successfully completed the continuing education requirements of Article 2.5 of  
Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to

1 satisfy this condition, the Commissioner may order the suspension of Respondent's license until  
2 Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity  
3 for a hearing pursuant to the Administrative Procedure Act to present such evidence.

4 VII.

5 Respondents DIRECT MORTGAGE FUNDERS INC and BENJAMIN

6 MAHJOUBI shall make a diligent effort to locate and repay \$6,000.00 to the two borrowers set  
7 forth in the table below within nine (9) months from the effective date of this Decision. (1)

8  
9 Respondents shall mail the payment(s) by certified mail, return receipt requested, to the  
10 borrower(s) last address on file with or known to Respondents. (2) If any of the payment(s) are  
11 returned by the Post Office marked "unable to deliver," Respondents shall employ a locator  
12 service (that may include or be limited to the Internet or other database retrieval search) to try  
13 and locate the aforesaid borrower. Repayments shall then be made to the addresses  
14 recommended by the locator service. (3) If unable to effect repayment after using a locator  
15 service, Respondents shall provide reasonable proof satisfactory to the Commissioner of his  
16 efforts to comply with the provisions of this paragraph. (4) If the Commissioner determines that  
17 proof to be unsatisfactory, the Commissioner shall so advise Respondents, and indicate what  
18 additional reasonable efforts should be made to make repayment to a borrower. (5) If the  
19 Commissioner determines that reasonable efforts have been made to locate the borrowers without  
20 success, any remaining balance shall escheat to the State of California. (6) If the Commissioner  
21 determines that proof to be unsatisfactory and that reasonable efforts have not been made to  
22 locate the borrower, the Commissioner may, by separate order, suspend Respondents' license  
23 until Respondent submits proof required by this Order.

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Table: Restitution to Loan Modification Borrower- Applicants

Homeowner- Borrower	Advance Fees Collected
Marie S. M.	\$3,500.00
Jose. O. S.	\$2,500.00
Total Advance Fees	\$6,000.00

VII.

All proof of compliance shall be submitted to Department Counsel Elliott Mac Lennan, Attention: Legal Section, Department of Real Estate, 320 W. Fourth St., Suite 350, Los Angeles, California 90013-1105, on or before the effective date of this Decision.

DATED: 12-11-12

  
ELLIOTT MAC LENNAN, Counsel for  
Department of Real Estate

\* \* \*

EXECUTION OF THE STIPULATION

We have read the Stipulation and Agreement and discussed it with our attorney. 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

1 right to cross-examine witnesses against us and to present evidence in defense and mitigation of  
2 the charges.

3 Respondents can signify acceptance and approval of the terms and conditions of  
4 this Stipulation by faxing a copy of its signature page, as actually signed by Respondents, to the  
5 Department at the following facsimile number: Elliott Mac Lennan at (213) 576-6917.  
6 Respondents agrees, acknowledges and understands that by electronically sending to the  
7 Department a fax copy of Respondents' actual signature as they appear on the Stipulation, that  
8 receipt of the faxed copy by the Department shall be as binding on Respondents as if the  
9 Department had received the original signed Stipulation.

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DATED: 10/24/12

Ben Mahjoubi  
DIRECT MORTGAGE FUNDERS INC.  
Respondents

DATED: 10/24/12

Ben Mahjoubi  
BENJAMIN MAHJOUBI,  
Respondents

DATED: 10/24/12

Arthur H. Barens  
ARTHUR H. BARENS, ESQ.  
Attorney for Respondents

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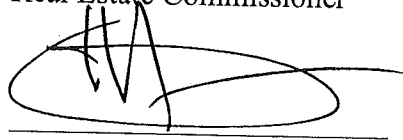
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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondents DIRECT MORTGAGE FUNDERS INC. and, BENJAMIN MAHJOUBI, and shall become effective at 12 o'clock noon on JAN 21 2014.

IT IS SO ORDERED DECEMBER 23, 2013.

Real Estate Commissioner



By: JEFFREY MASON  
Chief Deputy Commissioner