

FILED

AUG -6 2013

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

4 Telephone: (213) 576-6982

DEPARTMENT OF REAL ESTATE
BY: 

8 BEFORE THE DEPARTMENT OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

11 In the Matter of the Accusation of)
12)
13 ALLSTATE FINANCIAL SERVICES INC.,)
14 doing business as Allstate Lending and Realty; and)
15 KIMBERLY ANN ELKHATIB, individually and)
16 as designated officer of Allstate Financial Services Inc.;)
Respondents.)

No. H-38369 LA

STIPULATION
AND
AGREEMENT

17
18 It is hereby stipulated by and between Respondent KIMBERLY ANN
19 ELKHATIB, (sometimes referred to as "Respondent"), represented by Mark A. Nialis, Esq. and
20 the Complainant, acting by and through Elliott Mac Lennan, Counsel for the Department of Real
21 Estate, as follows for the purpose of settling and disposing of the Accusation filed on August 23,
22 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 Respondent 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. Respondent has received, read and understands 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. Respondent 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 Respondent hereby freely and voluntarily withdraws said Notice of Defense. Respondent
7 acknowledges that he understands that by withdrawing said Notice of Defense he thereby waives
8 his 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 he will waive other rights
10 afforded to him in connection with the hearing such as the right to present evidence in his
11 defense the right to cross-examine witnesses.

12 4. This Stipulation is based on the allegations contained in the Accusation. In the
13 interest of expedience and economy Respondent chooses not to contest these allegations but to
14 remain silent and understands that, as a result thereof, these allegations, without being admitted
15 or denied, will serve as a prima facie basis for the disciplinary action stipulated to herein. The
16 Real Estate Commissioner shall not be required to provide further evidence to prove said
17 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"), or another licensing agency of this state,
21 another state or if the federal government is involved, and otherwise shall not be admissible in
22 any other criminal or civil proceeding.

23 6. It is understood by the parties that the Real Estate Commissioner may adopt
24 this Stipulation as her Decision in this matter thereby imposing the penalty and sanctions on
25 Respondent's real estate license and license rights as set forth in the below "Order". In the event
26 that the Commissioner in his discretion does not adopt the Stipulation, the Stipulation shall be
27 void and of no effect and Respondent shall retain the right to a hearing and proceeding on the

1 Accusation under the provisions of the APA and shall not be bound by any stipulation or waiver
2 made herein.

3 7. The Order or any subsequent Order of the Real Estate Commissioner made
4 pursuant to this Stipulation shall not constitute an estoppel, merger or bar to any further
5 administrative or civil proceedings by the Department of Real Estate with respect to any matters
6 which were not specifically alleged to be causes for accusation in this proceeding.

7 8. Respondents understand that by agreeing to this Stipulation, Respondents agree
8 to pay, pursuant to Business and Professions Code Section 10148, the cost of the audit of Allstate
9 Financial Services Inc. The amount of said cost for the original audit (LA 110242) is \$2,715.50.

10 9. Respondents have received, read, and understand the "Notice Concerning
11 Costs of Subsequent Audit". Respondents further understand that by agreeing to this Stipulation,
12 the findings set forth below in the Determination of Issues become final, and the Commissioner
13 may charge Respondents for the cost of any subsequent audit conducted pursuant to Business and
14 Professions Code Section 10148 to determine if the violations have been corrected. The
15 maximum cost of the follow-up audit will not exceed \$2,715.50.

16 10. Respondent understands that by agreeing to this Stipulation, Respondent
17 agrees to pay, pursuant to Business and Professions Code Section 10106, the cost of the
18 investigation and enforcement of this matter. The amount of said cost is \$2,977.00.

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20 DETERMINATION OF ISSUES

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

23 I.

24 The conduct of KIMBERLY ANN ELKHATIB, as described in Paragraph 4,
25 herein above, is in violation of Sections 10085, 10085.6, 10145, 10146, 10148, and 10159.2 of
26 the Business and Professions Code ("Code") and Sections 2725, 2832.1, 2832, and 2970 of Title
27

1 10, Chapter 6 of the California Code of Regulations (“Regulations”) and is a basis for discipline
2 of Respondent’s license and license rights as a violation of the Real Estate Law pursuant to Code
3 Sections 10177(d), 10177(g) and 10177(h).

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5 ORDER

6 WHEREFORE, THE FOLLOWING ORDER is hereby made:

7 I.

8 The real estate broker license of Respondent KIMBERLY ANN ELKHATIB
9 under the Real Estate Law is revoked; provided, however, a restricted real estate salesperson
10 license shall be issued to Respondent, pursuant to Section 10156.5 of the Business and
11 Professions Code, if Respondent:

12 Makes application therefor and pays to the Department of Real Estate the
13 appropriate fee for the restricted license within ninety (90) days from the effective date of this
14 Decision. The restricted license issued to Respondent shall be subject to all of the provisions of
15 Section 10156.7 of the Code and the following limitations, conditions and restrictions imposed
16 under authority of Section 10156.6 of that Code.

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

21 2. The restricted license issued to Respondent may be suspended prior to hearing
22 by Order of the Real Estate Commissioner on evidence satisfactory to the Commissioner that
23 Respondent has violated provisions of the California Real Estate Law, the Subdivided Lands
24 Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted
25 license.

26 3. Respondent shall not be eligible to apply for the issuance of an unrestricted
27 real estate license nor for the removal of any of the conditions, limitations or restrictions of a

1 restricted license until two (2) years has elapsed from the effective date of the issuance of the
2 restricted license.

3 4. Respondent shall submit with any application for license under an employing
4 broker, or any application for transfer to a new employing broker, a statement signed by the
5 prospective employing real estate broker on a form approved by the Department of Real Estate
6 which shall certify:

7 (a) That the employing broker has read the Decision of the Commissioner
8 which granted the right to a restricted license; and

9 (b) That the employing broker will exercise close supervision over the
10 performance by the restricted licensee relating to activities for which a real
11 estate license is required.

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

17 6. Respondent KIMBERLY ANN ELKHATIB shall, within nine (9) months from
18 the effective date of this Decision, present evidence satisfactory to the Real Estate Commissioner
19 that Respondent has, since the most recent issuance of an original or renewal real estate license,
20 taken and successfully completed the continuing education requirements of Article 2.5 of
21 Chapter 3 of the Real Estate Law for renewal of a real estate license. If Respondent fails to
22 satisfy this condition, the Commissioner may order the suspension of the restricted license until
23 Respondent presents such evidence. The Commissioner shall afford Respondent the opportunity
24 for a hearing pursuant to the Administrative Procedure Act to present such evidence.

25 II.

26 Pursuant to Code Section 10148, Respondent KIMBERLY ANN ELKHATIB
27 shall pay the Commissioner's reasonable cost for the audit which led to this disciplinary action.

1 The cost of the original audit which led to this disciplinary action is \$2,715.50. In calculating
2 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
3 average hourly salary for all persons performing audits of real estate brokers, and shall include
4 an allocation for travel time to and from the auditor's place of work.

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

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

15 III.

16 Pursuant to Section 10106 of the Business and Professions Code, Respondent

17 KIMBERLY ANN ELKHATIB shall pay the Commissioner's reasonable cost for the
18 investigation and enforcement costs which led to this disciplinary action. The cost of the
19 investigation and enforcement which led to this disciplinary action is \$2,977.00. In calculating
20 the amount of the Commissioner's reasonable cost, the Commissioner may use the estimated
21 average hourly salary for all persons performing investigation and enforcement of real estate
22 brokers, and shall include an allocation for travel time to and from the special investigator and/or
23 attorney's place of work. Respondent shall pay such cost within 60 days of receiving an invoice
24 from the Commissioner detailing the activities performed during the investigation and
25 enforcement and the amount of time spent performing those activities.
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1 The Commissioner may suspend the license of Respondent pending a hearing held
2 in accordance with Section 11500, et seq., of the Government Code, if payment is not timely
3 made as provided for herein, or as provided for in a subsequent agreement between the
4 Respondent and the Commissioner. The suspension shall remain in effect until payment is made
5 in full or until Respondent enters into an agreement satisfactory to the Commissioner to provide
6 for payment, or until a decision providing otherwise is adopted following a hearing held pursuant
7 to this condition.
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9 IV.

10 Respondent KIMBERLY ANN ELKHATIB shall on or before the effective date
11 of this Decision, present evidence satisfactory to the Real Estate Commissioner that:

12 (A) With respect to the Homeowners set forth in the table below:

13 (1) Restitution of fees paid for loan modification services has been made;

14 (2) Unless determined by the Real Estate Commissioner to be satisfied or not
15 applicable; and

16 (3) If Respondent fails to satisfy either condition (1) or (2), the Commissioner
17 may order the suspension of Respondent's license until Respondents present such evidence. The
18 Commissioner shall afford Respondent the opportunity for a hearing pursuant to the
19 Administrative Procedure Act to present such evidence.

20 (B) To the extent that restitution repayment is applicable:

21 (1) Respondent shall deliver or mail the restitution payments, by certified mail,
22 return receipt requested, to the Homeowners last address on file with or known to Respondent.

23 (2) If any of the payments are returned by the Post Office marked "unable to
24 deliver," Respondent shall employ a locator service (that may include or be limited to the Internet
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1 or other database retrieval search) to try and locate the aforesaid borrowers. Repayments shall
2 then be made to the addresses recommended by the locator service.

3 (3) If unable to effect repayment after using a locator service, Respondent shall
4 provide reasonable proof satisfactory to the Commissioner of their efforts to comply with the
5 provisions of this Paragraph.

6 (4) If the Commissioner determines that proof to be unsatisfactory, the
7 Commissioner shall so advise Respondent, and indicate what additional reasonable efforts should
8 be made to effect repayment.

9 (5) If Respondent fails to satisfy this condition, the Commissioner may order
10 suspension of Respondent's license until Respondent effects compliance herein and/or order that
11 undeliverable or undelivered restitution payments escheat to the State of California.

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

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17 Table: Restitution to Homeowners per Accusation and Audit Report LA 110242

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Homeowner	Restitution
Avtar A.	\$ 700.00
Angela O.	\$ 2,625.00
Marcellina P.	\$ 2,625.00
Elvida S.	\$ 625.00
Total	\$ 6,575.00

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25 DATED: 3-22-13

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ELLIOTT MAC LENNAN, Counsel for
Department of Real Estate

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EXECUTION OF THE STIPULATION

I have read the Stipulation and Agreement and discussed it with my counsel. Its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act (including but not limited to Sections 11506, 11508, 11509 and 11513 of the Government Code), and I 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 I would have the right to cross-examine witnesses against me and to present evidence in defense and mitigation of the charges.

FACSIMILE

Respondent can signify acceptance and approval of the terms and conditions of this Stipulation by faxing a copy of its signature page, as actually signed by Respondent, to the Department at the following facsimile number: Elliott Mac Lennan at (213) 576-6917. Respondent agrees, acknowledges and understands that by electronically sending to the Department a fax copy of Respondent's actual signature as it appears on the Stipulation, which receipt of the faxed copy by the Department shall be as binding on Respondent as if the Department had received the original signed Stipulation.

DATED: 3/26/2013


KIMBERLY ANN ELKHATIB,
Respondent

DATED: 3/26/2013

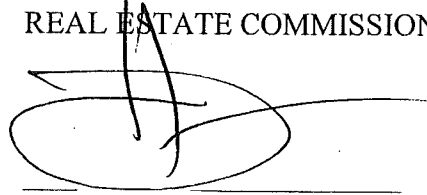

MARK A. NIALIS, ESQ.
Attorney for Respondent

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The foregoing Stipulation and Agreement is hereby adopted as my Decision as to Respondent KIMBERLY ANN ELKHATIB and shall become effective at 12 o'clock noon on August 26, 2013.

IT IS SO ORDERED July 29, 2013.

REAL ESTATE COMMISSIONER



By: JEFFREY MASON
Chief Deputy Commissioner